

ORIGINAL

NATIONAL INDIAN GAMING COMMISSION
CLASS II CONSULTATION

Tacoma Sheraton Hotel
Executive Board Room
1320 Broadway Plaza
Tacoma, Washington
July 25, 2006

CLASS II CONSULTATIONS WITH

NISQUALLY INDIAN TRIBE
SNOQUALMIE INDIAN TRIBE
SPOKANE TRIBE OF INDIANS
YAKIMA NATION
SPOKANE TRIBE OF INDIANS
SHOSHONE BANNOCK INDIAN TRIBES
PORT GAMBLE S'KLALLAM TRIBAL GAMING AGENCY
NEZ PERCE TRIBE
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION
NOOKSACK INDIAN TRIBE
SKOKOMISH INDIAN TRIBE
QUINULT INDIAN NATION

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No.	Description
1.	Document submitted by the Port Gamble S'Klallam Tribe
2.	Spiral-bound presentation by the Nooksack Indian Tribe

A P P E A R A N C E S

For the Nisqually Indian Tribe
4820 She-Nah-Num Drive
Olympia, Washington 98513

Cynthia Iyall, Tribal Chair
Inez "Dovey" Slape, Nisqually Tribal Gaming
Commission Secretary

(The consultation with the Nisqually Indian
Tribe began at 8:36 a.m.)

1 MR. HOGEN: Welcome to this government-to-
2 government consultation, here in Tacoma, on July 25th, 2006.
3 We are meeting pursuant to regulations, proposed
4 regulations, that NIGC published in the Federal Register on
5 the 25th of May, relating to the definitions that are used
6 and some proposed classification standards that relate to
7 how you define or distinguish Class-II equipment from
8 Class-III. Class II, of course, requires no Tribal/State
9 compact, and Class III requires a Tribal/State compact.

10 Here on behalf of NIGC today are myself, Phil Hogen,
11 chairman of the National Indian Gaming Commission; and
12 Commissioner Choney. Chuck Choney is the associate member
13 of the Commission.

14 And down at the end is Randy Sitton, who is our regional
15 director from the Portland office. John Hay is from the
16 General Counsel's office, and so is Michael Gross. And our
17 acting general counsel is Penny Coleman here.

18 And we've got Alan Phillips from our Sacramento office,
19 who is assisting us with these standards. And Natalie
20 Hemlock is an assistant to the Commission from our D.C.
21 office.

22 So would you please introduce yourselves and tell us
23 where you fit in with the tribe and gaming, and then we'd
24 very much like to hear your thoughts or comments on our
25 proposals.

1 MS. SLAPE: Sure. Dovey Slape. I'm the secretary
2 for the gaming commission at Nisqually Red Wing Casino.

3 MS. IYALL: Cynthia Iyall, chairman from Nisqually
4 Tribe.

5 MR. HOGEN: Okay. What would you like to tell us
6 about our proposed regulations, or what are questions you
7 might have?

8 MS. SLAPE: Well, actually, our tribal attorney
9 had sent a letter with our comments in June, and so just
10 want to kind of go back over that; and that is that we
11 don't -- first off, don't believe that this is a
12 consultation--we are to give our comments on this--and that
13 we think that the time line concerning the regulations is
14 inadequate, because you don't have enough time to sit down
15 with your attorneys and review everything that you need, and
16 the standards have not been published yet. The technical
17 and classification standards should be reviewed in order for
18 tribes to determine what the entire package is.

19 We also believe that there should be public hearings to
20 address the full issues, and that there should be a better
21 consultation process to develop needs.

22 MR. HOGEN: How do you think that might be
23 improved?

24 MS. SLAPE: I believe that, you know, when you're
25 getting ready for public hearings, that the public hearings

1 be held in gaming states, where, of course, this is going to
2 affect tribal gaming, large and small. You know, because I
3 had heard that there was going to be a meeting in Denver.
4 There's no gaming in Denver, so of course that was canceled.

5 So I think that better government-to-government hearings
6 should be established as far as with each state and have
7 input from that state, from all the tribes in that state,
8 like you're doing here.

9 MR. HOGEN: So your complaint is not about the
10 consultation we're having with the Washington tribes, but
11 the entire tribes?

12 MS. SLAPE: Right. The entire thing, because of
13 the fact of how this regulation is going to affect the
14 tribes monetarily, you know, and the services that are given
15 to tribal members, young and old, and how it's going to
16 affect the community or what's surrounding each tribe.

17 MR. HOGEN: Yeah. We are really concerned about
18 that, and we're concerned that if tribes engage in illegal
19 gaming -- that is, conducting Class-III gaming without a
20 compact -- it puts the entire gaming operation at risk of
21 closure, and, of course, that would be devastating to every
22 tribe.

23 MS. SLAPE: But how many tribes actually do that?

24 MR. HOGEN: We're concerned there are quite a few.

25 MS. SLAPE: Well, I know that, with the State of

1 Washington, all of these tribes have worked very hard to
2 develop a compact and work with the State. We abide by our
3 State compact, our federal regulations, and our tribal
4 regulations, and we also believe that what this reg is doing
5 would further regulate something that's already
6 overregulated. And tribes don't need that right now.
7 There's enough on their plates as it is.

8 And we also believe that, as far as the -- is that me
9 (cell phones ringing)?

10 MS. IYALL: No.

11 MS. SLAPE: That the certification of the machines
12 would just serve to bind the hands of tribal gaming more
13 than they already are. And as it is, that could take -- you
14 know, the NIGC is the sole people that will certify the
15 machines, certify the labs, and certify the gaming. And
16 then, if you have a complaint, then you have to go to NIGC.
17 That's giving too much power to just one commission, and so
18 we more or less object to that too.

19 And like I said, the economic impact, I think -- as far
20 as the Class II, that helps tribes in our area to get
21 started. And let me -- and we just, you know, think that
22 this would be just too overregulated for any growth to
23 occur. And for one commission, one agency, to have that
24 type of control is more hand-tying, and it's not good for
25 any reservation.

1 MR. HOGEN: The Indian Gaming Regulatory Act
2 directed the National Indian Gaming Commission to promulgate
3 standards. What do you think that meant? What was intended
4 by that?

5 MS. SLAPE: I think that, as far as each tribe, to
6 create their own standards of regulations for watching over
7 their gaming. To protect their assets is, of course, a
8 primary issue for every tribe. And that it's a tribal
9 thing, and that they do abide by the federal and the state
10 regulations, and this one more regulation is not in the best
11 interest of any tribe.

12 MR. CHONEY: I've got a comment on that. It would
13 be kind of nice if they did, but the tribes don't.

14 MS. SLAPE: What tribe?

15 MR. CHONEY: Well, I could go on and on, not only
16 in the State of Washington, but Oklahoma, California, New
17 York. I could spend the rest of the morning talking about
18 that. I've been on the Commission for three and a half
19 years now, and I was surprised at the problems the tribes
20 are having. It all boils down to they're not doing their
21 job. Their gaming commissions, their regulators, are not
22 doing the job. It's too political.

23 And if the tribes would let the gaming commissioners do
24 their job, it would alleviate a lot of their problems, but
25 they don't. Therefore, that's why we're mandated by

1 Congress to oversee not the tribes, but the regulators; make
2 sure that the regulators are doing their job.

3 MS. SLAPE: Mm-hm. Well, you know, I don't think
4 that lumping all tribes -- and I'm not saying that we're
5 innocent of politics. I mean, there's nobody that isn't
6 influenced by somebody's politics. I mean, you guys, the
7 Department of Justice may say you need to do this or you
8 need to do that; where we, at Nisqually, do our best to
9 separate from tribal council and gaming commission and make
10 sure that our gaming commission is up-front, and make sure
11 our casinos are --

12 MR. CHONEY: There are a lot of tribes out there
13 who have outstanding regulators, and you look at their
14 operations, they're professionally run. They're abiding by
15 the rules, and we wish everyone would be like that. But
16 unfortunately, they're not.

17 MS. IYALL: Do you have any numbers showing what
18 those are, what percentage-wise -- which half are doing
19 well? Because I'm wondering what really instigated all
20 this. I mean, is it that huge? Because I feel that, at
21 Nisqually, we do an excellent job, and we have fantastic
22 gaming commissioners who have been long-term. How long have
23 you been on the gaming commission?

24 MS. SLAPE: Six years.

25 MS. IYALL: A long time.

1 MR. CHONEY: Well, there are some instances where,
2 I mean, we're just flabbergasted that such things like this
3 happen. Like, you know, whenever they have a change in the
4 tribal government, they come in there, and they come in and
5 wipe out the whole commission and bring in their own people.
6 I mean, they ask some quality, experienced people to leave,
7 because they're not their supporters, and that happens time
8 and time again.

9 And percentage-wise, the numbers I like to use are
10 dollars. And in 2002, when we came on board, the annual
11 gross revenue for Native American gaming was \$12.7 billion;
12 and we recently released the 2005 figures, and it was 22.6.
13 So almost a 10-billion leap. So obviously, someone is doing
14 something right.

15 But there again, as I mentioned earlier, not everybody
16 does. So there has to be that regulation in there. That's
17 what we're trying to achieve by doing this, at least,
18 Class-II standards. We're trying to help the tribes. We're
19 definitely not trying to hurt them.

20 MS. SLAPE: Have you done a study on the economic
21 impact of this?

22 MR. CHONEY: No, we haven't.

23 MS. SLAPE: Well, what about the publishing?
24 There was a technical and classification standards. Why is
25 one finalized without the findings of the other one?

1 MR. HOGEN: Well, I -- I think what you're
2 addressing is the package that we've been working on for
3 about three years now.

4 MS. SLAPE: Right.

5 MR. HOGEN: That was the classification standards,
6 accompanied by some technical standards. We published five
7 drafts, each one a revision of the former, on our Web site,
8 so they've been out there for more than a year now. And
9 accompanying the classification standards were a set of
10 technical standards, and we needed two drafts of those, two
11 versions of those.

12 When we decided we could not wait any longer to get this
13 process rolling or official and put those proposals in the
14 Federal Register, we decided that the technical standards--
15 which are just that, very technical--had gotten a little
16 obsolete. There were some technological developments that
17 needed to be addressed. And so we have revised those, and
18 they will be published momentarily.

19 And hopefully, eventually, this fall sometime, we'll be
20 able to receive comments on all of those and adopt the
21 package, both the technical standards and the classification
22 standards. But in terms of how those standards that will be
23 published very soon will differ from those that have been on
24 our Web site and published for more than a year, there will
25 be really minor differences. So it's not as though we were

1 keeping all of it secret. We're trying to get a modern,
2 effective product and tweak it so changes wouldn't be
3 immediately necessary after they were done.

4 MS. SLAPE: Well, then, how do you view the issue
5 of certifying labs and certifying games and the time that
6 that will take, from tribal casinos? I mean, if you're so
7 backed up right now -- you, NIGC, is so backed up right now,
8 and yet, before a game can be put on a casino floor, the lab
9 has to be certified, the game has to be certified, and that
10 could take, what, 36 months? And the economic impact for
11 each tribe, big or small, is going to be devastating.

12 MR. HOGEN: I've not heard that 36 months.

13 MS. SLAPE: I may be just making that up.

14 (Laughter.)

15 MR. HOGEN: Yeah. Well, we will very promptly, if
16 and when we finalize these regulations, consider all
17 laboratories that ask to be certified and --

18 MS. SLAPE: But they have to be asked to be
19 certified?

20 MR. HOGEN: Well, yes. We don't want to be
21 accused of showing favoritism to one lab over another. They
22 would need to come to us.

23 MS. SLAPE: But before the games are released to
24 be put on the casino floor, they have to be certified by
25 NIGC.

1 MR. HOGEN: That's right. We will finalize these
2 standards. Then we'll say: "This is what a Class-II device
3 must meet."

4 MS. SLAPE: Will there be public hearings on that
5 before the finalization?

6 MR. HOGEN: We may have a public hearing. Very
7 likely, we'll have a public hearing.

8 MS. SLAPE: And will there be sufficient time for
9 each tribe to be able to gather information and their
10 opinion to be able to attend these?

11 MR. HOGEN: Well, yeah. That -- that --

12 MS. SLAPE: I mean --

13 MR. HOGEN: We will publish notice and, you know,
14 I think they will be in a place where tribes routinely
15 travel to intergovernmental relationships. And I don't
16 think anybody will not be given enough notice to make
17 arrangements to attend.

18 But once the rules are finalized, the labs are certified,
19 then NIGC kind of gets out of the loop. That is, the
20 laboratories will certify whether the devices qualify or
21 not, and then they need to furnish that report to the NIGC.

22 Under the current proposal, NIGC could object. But
23 assuming there is no objection, the games could be utilized.
24 And I think the time frame that we have, six months, to
25 adopt this, with the possibility of requesting some

1 additional time, that would be adequate to permit that.

2 MS. SLAPE: Okay. So what I was led to believe
3 would be, okay, that would be six months for the
4 finalization. Is that what you just said?

5 MR. HOGEN: Well, no.

6 MS. SLAPE: Or six months for the comment?

7 MR. HOGEN: Once we finalize the regulations, I
8 think they would become effective 30 days after they're
9 published in the Federal Register. Then the clock would
10 start running. Tribes would have six months to get
11 certified the equipment they were going to use to do Class-
12 II gaming.

13 MS. SLAPE: So if they can't get that certified
14 within the six months, then they can ask for an extension?

15 MR. HOGEN: That's possible.

16 MS. COLEMAN: Yes.

17 MS. SLAPE: So that could take up to a year to get
18 new games on the floor? Is that what I'm understanding?

19 MR. HOGEN: Well, if the tribe couldn't accomplish
20 it in six months -- and I don't know why they couldn't, but
21 if they needed -- they could request additional time to come
22 into compliance.

23 MS. SLAPE: So that could take a year, a year away
24 from the tribe, of getting a new game on the floor.

25 MR. HOGEN: Well, we assume the tribes have games

1 on the floor now, or will.

2 MS. SLAPE: So that wouldn't impact -- the games
3 that are on the floor would not have to be recertified or
4 certified by NIGC?

5 MR. HOGEN: If they've not yet been certified,
6 they would have been to be certified, and that's what this
7 time frame is for.

8 MS. SLAPE: So you're looking at six months to
9 certify the games that are existing in casinos, and then
10 another six months to certify new games?

11 MR. HOGEN: Well, it wouldn't necessarily be
12 another one. That could be the same period of time.

13 MS. SLAPE: What am I not understanding here?

14 MR. HOGEN: Let's say you've got a game called
15 "Bells and Whistles" on your floor the day these go into
16 effect.

17 MS. SLAPE: Right.

18 MR. HOGEN: You would need to--

19 MS. SLAPE: Have that certified.

20 MR. HOGEN: --take it and certify it. And let's
21 assume, that same day, you decide you want to put the new
22 game Whiplash on your floor and play Class II. You could
23 send -- and your manufacturer could send both of those to
24 the lab that first day. And then it would be a six-month
25 period of time to certify the older game, and as soon as

1 either one of them are certified, they would --

2 MS. SLAPE: Bring them back.

3 MR. HOGEN: -- you could play them both.

4 MS. COLEMAN: Plus, if other tribes are having
5 games certified, you can rely on that certification too.

6 MS. SLAPE: So if we had something certified prior
7 to, say, Lucky Eagle had something certified, they could
8 piggyback on our certification?

9 MS. COLEMAN: Right. And you could --

10 MS. SLAPE: Or we could piggyback on Emerald
11 Queen's certification?

12 MS. COLEMAN: Or if someone in Oklahoma City --

13 MS. SLAPE: I didn't see that anywhere, saying
14 that that could happen. The way that I interpreted that is
15 that it's going to take six months for the old games, six
16 months for the new games, and you could be out of the water
17 for a year.

18 MR. HOGEN: I don't think -- that's certainly not
19 what's intended.

20 MS. SLAPE: So wouldn't the better explanation of
21 how that's going to happen need to be put in there so that
22 not everybody is going to misinterpret that the way I have?

23 MR. HOGEN: That's one of the things that these
24 consultations are already helpful for. They point out
25 places we've not done an adequate job to explain what we

1 intended. So we'll try to clarify that.

2 MS. SLAPE: Because that, right there, would be --
3 and that's, you know, a year with no certain amount of
4 machines. If you go through your casino and say, "Okay,
5 we're going to take this amount of machines and have to have
6 them certified," so that section would have to be closed
7 down until they're done being certified, correct?

8 MS. COLEMAN: No.

9 MS. SLAPE: Is that what we would have to do?

10 MS. COLEMAN: No. It's set up so that, for the
11 first six months, you're just going ahead and you're playing
12 those games while you're getting them certified. The idea
13 is to give you some transition time while you --

14 MS. SLAPE: See, that would need to be in there
15 also, because the way I understood you to say is that they
16 would have to be removed and sent back to the lab to get
17 certified and then brought back. So I'm interpreting that
18 as we're out of the water.

19 MR. HOGEN: No. And it may be the definition of
20 terms here. When we say a game is certified, not each
21 machine on the floor has to go to the lab.

22 MS. SLAPE: Right. But if you have, like, Fairy
23 Tales and you have Shark Tails, or whatever, and you have to
24 have your Fairy Tales out and it's going to take six months
25 and you have -- you only need one machine gone? Or is that

1 in the lab? Where is that at? See, that's where --

2 MR. HOGEN: It works like other games work now.
3 That is, let's say IGT is the manufacturer, and they come up
4 with Shark Tails, Model 101.6, and they send that to IGT --
5 or to GLI, Gaming Laboratories International, and they say,
6 "Test this game." Right now, they do that, and they test it
7 so that the person that's buying it knows that that machine
8 will really do what the instructions say.

9 MS. SLAPE: Right.

10 MR. HOGEN: Does it have a random-number generator
11 that's really random, and so forth.

12 MS. SLAPE: Right.

13 MR. HOGEN: Well, in addition to doing that, GLI
14 will also say: "Does this comply with these new NIGC
15 regulations?" You might send that to them on January 1st,
16 but they might send it back to you on January 28th, saying,
17 "We've tested it. It does. You're good to go," and you've
18 beat the deadline by five months.

19 MS. SLAPE: But if the lab that -- if that
20 particular company is already backed up, because maybe they
21 serve more than just the State of Washington, and so then
22 they can't get that particular game certified within the six
23 months, then we'd need an extension.

24 MR. HOGEN: That would be possible, and we would
25 try to take a realistic look at how that was working.

1 MS. SLAPE: And how backed up that company might
2 be?

3 MR. HOGEN: We can't just assume the marketplace
4 won't meet the demand. We assume that it does.

5 MR. CHONEY: The only distinction, it's going to
6 be a case-by-case, tribe-by-tribe basis. And there's going
7 to have to be extenuating circumstances. We're going to
8 make sure the tribes aren't trying to play the time game,
9 that they waited till the last minute. You're going to have
10 to show us good faith, that, you know: "We submitted these.
11 The lab, they're the ones that are backed up." Then we
12 would take that into consideration on the extension.

13 MS. SLAPE: Well, I would hope that no tribe would
14 play that waiting game, because that means their financials
15 are going to just go down the tubes. So I can't see that as
16 a -- well, in our area, in our state, I don't see that as
17 something that would happen.

18 MR. CHONEY: I don't see that happening either,
19 but, you know --

20 MS. SLAPE: But from what I'm able to understand
21 from manufacturers is, if they have new games coming out,
22 they have to go back and certify these old games. They
23 could end up being backed up for the year, six months
24 longer. So, you know, the impact, financially, on casinos
25 is just going to be devastating, in my opinion.

1 MR. HOGEN: Yeah. It wouldn't be nearly as
2 devastating as if the tribe chose to play an illegal game
3 where they've got their facility closing.

4 MS. SLAPE: But the way I'm interpreting what
5 you're saying is: Every game in that casino is going to be
6 illegal.

7 MR. HOGEN: No. If they have a compact and
8 they're playing Class-III games --

9 MS. SLAPE: But until it's certified -- isn't that
10 what you're saying? Until that game is certified, it is
11 illegal.

12 MR. HOGEN: Well, not if -- we're talking about
13 Class-II games as opposed to Class III.

14 MS. SLAPE: If the definitions-- you yourself said
15 that you needed better explanation of the different
16 definitions.

17 MS. COLEMAN: But the regulations, the
18 certification requirement, only applies to your games that
19 are Class II. Your games that are being played under a
20 compact are not subject to these regulations. So the ones
21 that you have compacted, you don't need to worry about. You
22 use the compact regulations. But your Class-II games -- how
23 many Class-II games do you have?

24 MS. SLAPE: I don't know. I don't keep track of
25 that. I'm just saying that, you know, Class II is very

1 important to each individual tribe, because that's the
2 building block.

3 MS. COLEMAN: But is it important to your tribe?

4 MS. SLAPE: Yeah. I mean it's important to all
5 tribes, economically and growth-wise; that these things --
6 you know, you're saying right now -- okay, we have our
7 compact, and we are under that regulation, and we follow our
8 state regulations. But then he wants to come in and say:
9 "Okay, you have to have all these machines certified before
10 you can play them." And then, in my interpretation, that
11 means that every game in the casino is illegal.

12 MS. COLEMAN: No. That's not the correct
13 interpretation. The interpretation is--

14 MS. SLAPE: It gets back to definition.

15 MR. COLEMAN: --identify your Class-II games. So
16 you need to know how many Class-II games you have in your
17 facility, and those are the ones that you need to be looking
18 at. Those are the ones that you need to make sure are, in
19 fact, Class II, because those are the ones that, if they're
20 not Class II and they're not being played pursuant to the
21 compact, the tribe is at risk for having those closed down.
22 That's the problem we're trying to fix, is to assure that
23 your Class-II games are, in fact, Class II.

24 MS. SLAPE: Okay. Well, in the State of
25 Washington, do you know exactly how many tribes are not --

1 are -- like you said earlier, that have problems with the
2 political conflict? Because I think that some of these
3 other numbers need to be released also instead of lumping us
4 all together in one little reservation pot here and say:
5 "Okay, well, let's see who bubbles out."

6 MR. CHONEY: Well, we have tossed that around over
7 the last couple of years: Shall we release, not the tribes'
8 names, but the actual numbers?

9 MS. SLAPE: For each state.

10 MR. CHONEY: We have elected not to because, as
11 you know, there are a lot of critics of the American gaming;
12 not only in the media, but in Congress and in the state
13 governments. If we released the true numbers on the mixed
14 violations and the other violations, we would be spending
15 all of our time standing in front of Congress explaining how
16 come there's so many problems. Mind you, we're not covering
17 it up, but we certainly don't want to wave a red flag that
18 there are some problems out there.

19 MS. IYALL: Is there any way to -- rather than
20 releasing that kind of information and making that public,
21 is there any way to do it within the -- within just the
22 tribe, maybe to stagger tribes that have those violations as
23 opposed --

24 MR. CHONEY: Oh, yeah. We go directly to the
25 tribes. As soon as our field investigators find a problem,

1 we try to correct it. And there are a lot of corrections
2 made, you know, before they leave the property. But then
3 again, there are a lot of problems that aren't corrected,
4 which causes us to take, you know, enforcement action. But
5 that's as a last resort.

6 MS. IYALL: I think -- let's be clear. Our bottom
7 line is that we're against doing this, and we don't feel
8 that we've been in violation of anything, and it's just not
9 going to behoove us in any way whatsoever. So we would
10 rather be on the end of that where we're rewarded for having
11 followed the regulations and having been good performers and
12 working well with the other governments to do what we need
13 to do. So we would rather be in a situation where we feel a
14 little bit more rewarded rather than--

15 MS. SLAPE: Penalized.

16 MS. IYALL: --penalized.

17 MR. HOGEN: Well, we would like to reward those
18 who, like you, are doing a good job. The problem that we
19 have is there is not the regulation. That is, there is a
20 statement in the Indian Gaming Regulatory Act that says
21 tribes can do Class-II gaming with technologic aids. And
22 there's a statement in the Indian Gaming Regulatory Act that
23 says, if you use an electronic facsimile of a game of
24 chance, that is a Class-III game. And where you separate
25 the two is not clear.

1 So tribes, like Nisqually, that are faced with "we need
2 to invest in some equipment to do Class-II gaming," you want
3 to be sure, when you do that, somebody isn't going to come
4 along the next day and say, "You've got to get rid of those
5 machines because they are electronic facsimiles."

6 So we're trying to draw a bright line to guide gaming
7 manufacturers, tribes, regulators like us, tribal regulators
8 so we'll all be on the same page. And when you go to the
9 State to negotiate a compact, there won't be any doubt in
10 your mind. And "if we don't get what we want in the
11 compact, this is what we would be able to do with Class II
12 without a compact."

13 And it's a tough job, because technology changes so
14 rapidly. The minute we write one advisory opinion, it's
15 obsolete, because something else has come along. So we're
16 going to try to get to the right place.

17 We will study and be guided by the letter that you've
18 written us. Hopefully, you can attend any public hearing
19 that we do conduct. And we will be finalizing those
20 decisions soon, and should you have other comments that you
21 want to share with us, we're trying to gather them by the
22 23rd of August if we can.

23 MS. IYALL: Do we have any anticipated dates for
24 those public hearings?

25 MR. HOGEN: I would expect it would be sometime in

1 September, but I don't know for sure.

2 MS. SLAPE: And those will be published on the
3 NIGC Web site?

4 MR. HOGEN: Yes. We'll probably do that as well
5 as a Federal Register notice.

6 MS. SLAPE: Okay. And the definitions, will those
7 be clarified a little bit more prior to that, as far as,
8 like I said, the facsimile of what is -- I mean, from what I
9 read here on the bingo thing, you know, I remember bingo.
10 As a kid, was: If you filled your card, you get a bingo.
11 And then reading this, I'm like, what do they mean?

12 MR. HOGEN: We've asked ourselves those same
13 questions.

14 MS. SLAPE: I think it was kind of beaten to death
15 in this, as far as the definition goes.

16 MR. HOGEN: Yeah. It got much more complicated
17 than we ever thought it would or could. But that was driven
18 by the fact that manufacturers would come to us with a game
19 that they called bingo, and it took them an hour to explain
20 to us how what they were doing was bingo.

21 MS. SLAPE: Well, I had played a machine that had
22 a bingo card, and it was like -- okay, you were on a time
23 frame as to when to daub or when -- it said "daub now," and
24 you push a button and you daubed. And it was just, you
25 know, so simple. I couldn't see, after reading this, what

1 -- why it got so, I guess, out of hand as far as defining
2 that it has to be this amount of the screen, and you have
3 this amount of seconds to deal with it. And it was just way
4 too confusing compared to -- I mean, not the game; reading
5 this and then playing the game, I couldn't see what it was
6 so --

7 MR. HOGEN: After studying IGRA and the
8 legislative history and the court decisions that have been
9 made, one of the things that came through to us was what, in
10 part, distinguishes bingo, or Class II, is the players need
11 to participate. There needs to be the player participating,
12 not the machine playing the whole game.

13 So we thought: Well, they better have an opportunity to
14 daub their card and, just like with paper bingo, the
15 opportunity to sleep their bingo. If you're not paying
16 attention, you don't deserve to win, and somebody else can
17 beat you to the punch and win the bingo prize.

18 So we wanted to provide an interval there where that
19 could occur. We're trying to get it right. We're getting a
20 lot of good advice on this action.

21 Well, thank you much for consulting with us, and we will
22 look at the letter you've sent us and --

23 MS. SLAPE: I have a copy if you need another one.

24 MR. HOGEN: That would be useful. We can put it
25 in this package. Thank you.

(The consultation with the Nisqually Indian
Tribe concluded at 9:10 a.m.)

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A P P E A R A N C E S

For the Snoqualmie Indian Tribe
P.O. Box 969
Snoqualmie, Washington 98065

Matthew Mattson, Tribal Administrator
Lynn Claudon, Consultant

(The consultation with the Snoqualmie Indian
Tribe began at 9:32 a.m.)

1 MR. HOGEN: Good morning. I'm Phil Hogen,
2 chairman of the National Indian Gaming Commission. We're
3 here in Tacoma on the 25th of July, 2006, pursuant to
4 proposed regulations and definition changes that the
5 National Indian Gaming Commission published in the Federal
6 Register, on May 25th, regarding the issue of distinguishing
7 equipment you can use to play Class-II, uncompact games
8 and Class-III games that require compacts. Commissioner
9 Chuck Choney is here.

10 MR. CHONEY: Hello.

11 MR. HOGEN: We're the Commission these days. And
12 we have our acting general counsel, Penny Coleman; and from
13 her office, Michael Gross and John Hay. And we've got Alan
14 Phillips, from our Sacramento office; Gary Peterson, from
15 our Portland office, here, who are assisting us.

16 So would you please introduce yourselves and tell us how
17 you are affiliated with the tribe and the gaming operations,
18 and then we'd love to hear your comments regarding what
19 we've proposed.

20 MR. MATTSON: My name is Matthew Mattson. I'm the
21 tribal administrator for the Snoqualmie Indian Tribe. We do
22 not currently have an operational gaming establishment, but
23 I'm involved, as the tribe's lead staff person, in
24 developing the casino at Snoqualmie.

25 MS. CLAUDON: My name is Lynn Claudon. I'm a

1 public-affairs consultant and land-use consultant to the
2 Snoqualmie Tribe.

3 MR. MATTSON: Well, you know, I guess our comments
4 -- we're still trying to get our arms around, a little bit,
5 what the regulations mean and entail and how they affect
6 play and the speed of play and how those definitions impact
7 those issues that are, you know, critical to the performance
8 and -- you know, the economic performance of those units.

9 We're concerned that, you know, this isn't a formal
10 consultation. I'm sure you've heard that from other tribes
11 that have come before you. You know, as we've all talked
12 about this, it seems like a more informal -- it's not a
13 public consultation, per se, and I'm just curious why that
14 is and why --

15 MR. GROSS: I'm sorry. I apologize for being rude
16 and interrupting. Why is this not a formal consultation? I
17 generally fail to understand that. The Commission has
18 travelled across the country to be here and has issued
19 invitations to any and all tribal leadership that wants to
20 come. What more is required for a formal consultation?

21 MR. MATTSON: Well, I mean, this -- you know, my
22 experience with these consultations in the past is that
23 these meetings have been just specifically to talk to tribes
24 and for the tribes to talk to the Commission about issues
25 that are specific to the tribe; whereas, you know, this sort

1 of consult- -- I mean this sort of comment on broad
2 regulations seems like it should be a more public,
3 formalized process instead of meeting with us individually
4 behind closed doors, I guess, would be my view of
5 consultation.

6 MR. GROSS: It doesn't seem like there's anything
7 informal about this meeting. Everything said is being
8 recorded by the court reporter. That record will be made
9 public, along with all of the other transcripts being made.
10 There's nothing secret about it.

11 When we go to public meetings, we're also told that these
12 are not consultations because tribal leadership does not
13 have the opportunity to be there. The Commission has gone
14 out of its way to provide every tribe with the opportunity
15 for its leadership to be present.

16 Now that the Commission is here and the tribal leadership
17 is present, we're told that that isn't consultation either.
18 I'm left a little bit confused about what the proper form of
19 consultation might be.

20 We've had a number of requests for a public hearing. The
21 Commission is very seriously considering those, all right?
22 And every tribe that has asked for that has received that
23 very same answer from the chairman.

24 MR. MATTSON: Well, I mean, I guess, you know,
25 part of it, I guess, from our perspective -- and maybe this

1 is not -- you know, maybe this is the new NIGC. Maybe you
2 guys are moving faster and becoming more nimble. It seems
3 like this came together rather quickly.

4 And as I said, my experience with these meetings -- I've
5 been to, I guess, four of these in the past four years --
6 that this has more been an opportunity for us -- every year
7 at this trade show, we sit down with the Commission, and we
8 talk about issues that are specific to us, as opposed to
9 confining our discussion to a, you know, Class-II regulation
10 that was, you know, proposed back in May that seems to have
11 morphed over the summer.

12 And, you know, now, here we are, a few months later, and
13 this is all that we're talking about. I mean, that's just
14 not been my experience, and this is the first time -- again,
15 this is my fourth one, and we've got a court reporter here,
16 sitting here, recording our conversation. And somehow, this
17 is going to -- you know, I don't know. It's just a -- it's
18 uncomfortable for me, and it's not the experience that I've
19 had.

20 MR. HOGEN: Would you like to discontinue the
21 consultation?

22 MR. MATTSON: No. I mean, I'm happy to be here to
23 talk. I think, just lodging my comment up front is --

24 MR. CHONEY: At previous meetings, I do remember
25 meeting with you, and we would ask you to come to us to

1 discuss any problems or any concerns that your tribe might
2 have toward gaming.

3 However, at this meeting, what we're following is the
4 administrative procedures and consultation policies, sent
5 out letters, and we have a specific item to discuss, and
6 that's the Class-II-standards revision. That's what we want
7 to talk to you about. That's why we're going on record,
8 because this is a public meeting. This is not a closed-door
9 meeting.

10 We sent letters out to your tribal chair, and either your
11 tribal chairman couldn't make it and, therefore, he sent his
12 representative, which is you, to give us your tribe's
13 concerns on this specific matter.

14 But if you don't want to talk about this matter, we have
15 to go off the record, because, if you have some internal
16 matters that you want to bring forth to us, you don't want
17 other tribes to know about it, so then we have to go off the
18 public record.

19 But we're here to talk about, at this meeting, that --
20 we're leaving tonight. We're going to Ontario, California,
21 to meet with about 20 more tribes down there over a two-day
22 period. And then the week after that, we're going to
23 Oklahoma, and we're going to probably meet with about 30
24 tribes there, to discuss, specifically, this matter,
25 Class-II standards provisions. But the other, previous,

1 consultations was any matter that you wanted to discuss.

2 MR. MATTSON: Okay.

3 MR. HOGEN: Now, are there specific questions,
4 comments that you have regarding the proposed classification
5 issue?

6 MR. MATTSON: Well, you know, as I understand it,
7 there's an effort to try to, you know, categorize these
8 machines based on, you know, a pool of existing players and
9 how that works and kind of how, you know, to play and the
10 delay of the time when you sort of make the -- basically,
11 make the bet and when the outcome is revealed on the
12 machine, and trying to categorize that.

13 I mean, you know, I'm a little confused about how the
14 pool works and what you're trying to accomplish and why
15 you're trying to effectively slow down the game. I don't --
16 you know, from my perspective, you know, conceptually, if
17 there is a pool, it doesn't make sense that there would have
18 to be mandatory delays. It is what it is.

19 And if the tribes or the gaming manufacturers, under the
20 regulations, are able to speed up that play, under the basic
21 concept, it doesn't make sense to me why you would try to
22 regulate or legislate the speed of that game.

23 So that would be a concern of mine. Because, you know,
24 as tribes are becoming more sophisticated with the gaming
25 industry, you know, it seems like this is a government

1 regulation that's trying to pull us back.

2 And in the marketplace, you should be rewarded for
3 ingenuity. That's the way all markets work, in my opinion.
4 So it doesn't make sense to me that the Commission is coming
5 in here and trying to slow that down deliberately, just
6 because the tribes have been successful in working with
7 gaming companies to come up with devices that are successful
8 and perform better. So that's my, sort of, general comment.

9 MR. HOGEN: Thank you. Let me just address that
10 and tell you where I'm coming from anyway. The Indian
11 Gaming Regulatory Act says tribes can do Class-II gaming,
12 and they can use technologic aids to do that. And they have
13 done it very creatively.

14 The Indian Gaming Regulatory Act also says if gaming is
15 or becomes an electronic facsimile of a game of chance, then
16 it's Class III and can only be played pursuant to a compact.
17 And trying to find the line between those two is what we
18 have been doing for a couple of years now, with the
19 assistance of the Tribal Advisory Committee, by publishing
20 our daft regulations on our Web site, conferring with the
21 Department of Justice, to try to get their blessing so that
22 they don't take an overaggressive approach with respect to
23 enforcement of the Johnson Act as we do this. And it's
24 difficult.

25 We have concluded, from studying the case law, the Indian

1 Gaming Regulatory Act, the legislative history, that one of
2 the things that characterizes this Class-II play is
3 competition among other players--you can't just play against
4 the machine--and that there needs to be some player
5 participation. That is, it can't all be in the machine. It
6 has to be the players playing.

7 And there are some devices currently being played in
8 Class-II -- purportedly Class-II environments, where all the
9 player does is touch the button once, and the machine does
10 everything else. I feel that has become an electronic
11 facsimile of a game of chance, and, therefore, we need to
12 create an interval there so that the player can participate.

13 Maybe two seconds, as we now propose, to daub the card,
14 isn't just right. We're getting some comments about that,
15 and we're studying it. But there does need to be an
16 opportunity for players to participate.

17 Those things will distinguish this player-participation
18 game from an electronic facsimile of a game of chance. And
19 we're trying to get to the right place, and if, as you give
20 further thought to what we have proposed, you have
21 suggestions or ideas how that might be accomplished yet not
22 slow things down too much, we'd be very interested in
23 hearing about that.

24 But you're absolutely right. Technology and tribal
25 ingenuity has moved a long ways. But we're the ones who

1 have been tasked with writing federal standards that will
2 try to keep things along the track that the Congress
3 envisioned when they wrote the Federal Indian Gaming
4 Regulatory Act. And having a tool with which to distinguish
5 Class II from Class III is long overdue, and we're trying to
6 get there by drafting these regulations.

7 MR. MATTSON: So when you say "player
8 participation," do you mean that, somehow, in the mind of
9 the player -- I mean, from the NIGC's perspective, somehow,
10 in the mind of the player, they have to register what's on
11 the screen and then do some other physical action that is a
12 result of a mental process? So I play once, and then I play
13 twice? Or, that's your conception of this?

14 MR. HOGEN: Yeah. Most of the games that fall
15 into these categories are bingo-based, and IGRA said what
16 bingo was. It says you have to have a card. It has to be a
17 unique card. And then numbers are called, and you cover
18 your numbers that might make up that winning pattern when
19 those numbers are called. And so the player has to do
20 something to participate in that process.

21 Now, if the machine does it all, it has become a
22 facsimile. It's no longer a player-participation game. So
23 to the extent that the player is conscious of what daubing
24 his card means, yes, he has to be conscious of that.

25 MR. MATTSON: Okay. Well, I know a lot of people

1 that go through life and are entirely unconscious, so I
2 don't know what two seconds really does. But, you know, I
3 guess that, you know, it comes down to this definition of
4 what player participation is. I mean, already, here in the
5 State of Washington, as I'm sure you're aware, we have sort
6 of hybrid Class-III units. The negotiations with the State
7 and the compact that resulted, we already have two-button
8 play for our Class-III devices.

9 And, you know, I don't know if the feds are sort of
10 trying to, you know, give the states more leverage against
11 us. I think that's contrary to, sort of, the policy of
12 tribal self-sufficiency. I think some more thought has to
13 be given to this two-second issue and, really, what the
14 level of player participation is that you're trying to sort
15 of codify in these regulations.

16 Two seconds seems random. I'd be interested in what
17 the -- I mean, besides just this general comment. I mean,
18 what's the conceptual reasoning for two seconds? Is that
19 sort of how long it takes the brain to process what's on the
20 screen?

21 MR. HOGEN: I think it takes about that long for
22 some brains to process. And I'm not particularly quick at
23 the switch, so to speak, and so I rely on my own experience,
24 in part, to try and get us to the right place.

25 MS. COLEMAN: Well, one of the things about the

1 two seconds, too, is that a lot of the games that were being
2 developed were three seconds for daubing, and that seemed to
3 be about what we -- we who don't play it very often, felt
4 comfortable at.

5 But the Advisory Committee is part of the consultation
6 process. We had an advisory committee, and the Advisory
7 Committee, who included a lot of people with a lot of
8 experience in this area, convinced us that two seconds was
9 the right amount of time as far as being able to react and
10 to see what was going on.

11 MR. MATTSON: Okay. I guess I didn't see who was
12 on the Tribal Advisory Committee.

13 MR. HOGEN: Yes, we had formed a Tribal Advisory
14 Committee a couple of years ago. We invited tribes to
15 nominate folks to serve on that, and we got some really good
16 nominations. We selected folks that were involved in the
17 operation and management, as well as tribal gaming
18 regulators, and met all over the country. I do not recall
19 how many meetings we had, but I think it's reflected in the
20 preamble to the proposed regulation.

21 MR. MATTSON: Okay. Can you tell me, a little
22 bit, what the process is from here, from your perspective?
23 Is that appropriate?

24 MR. HOGEN: We're going to consider the comments
25 that we receive, both at the consultation sessions and the

1 written comments. We will publish, momentarily, the
2 technical standards that were developed with the assistance
3 of our advisory committee and receive comments with respect
4 to those as well.

5 Very likely, we will be deciding to have a public hearing
6 and announcing that sometime soon and receive further input
7 then. We'll then look at all of this input that we've
8 received; decide (a) do we want to go forward with these
9 regulations, and (b), if so, what the final draft will look
10 like, and then finalize them and publish them in the Federal
11 Register.

12 Ideally, to get this project behind us, that would occur
13 sometime this fall. And then, after publishing in the
14 Federal Register, they would become effective 30 days
15 thereafter.

16 That would start the clock running with respect to when
17 tribes needed to comply with the regulations. There would
18 be a six-month period of time for the tribes to certify, or
19 have certified by gaming laboratories, devices that they're
20 using for Class-II play as compliant with those regulations.
21 If there was a problem in meeting that, there could be a
22 request to extend that compliance period.

23 Thereafter, hopefully, all games that are being played as
24 Class II would be games that have been certified as
25 complying with these regulations. And as new devices come

1 along, tribes and the manufacturers would take them to the
2 laboratories, get them certified as Class II, and then they
3 could be placed on the floor.

4 MR. MATTSON: And you envision that the NIGC would
5 be involved in that certification process, or would the
6 states also be involved?

7 MR. HOGEN: No. The NIGC would certify gaming
8 labs that wanted to participate in the process. Then the
9 tribes and the manufacturers would go directly to the labs.
10 We were concerned that if we were in the loop, there would
11 be a possibility that we would become a bureaucratic
12 bottleneck and slow up the process, and we don't want to do
13 that.

14 Now, the certification report that the lab would generate
15 after examining the devices would also be provided to the
16 NIGC, and we'd have the opportunity to object if we
17 disagreed that what was included as Class II wasn't Class
18 II. There's a procedure outlined for that.

19 MR. MATTSON: Okay. Well, I guess that's all my
20 comments.

21 MR. HOGEN: We appreciate you sharing them with
22 us.

23 MR. MATTSON: Thank you. Thank you for waiting
24 for us. Sorry about the confusion.

(The consultation with the Snoqualmie Indian
Tribe concluded at 9:52 a.m.)

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A P P E A R A N C E S

For the Spokane Tribe of Indians
P.O. Box 100
Wellpinit, Washington 99040

Gerald Nicodemus, Tribal Council
Richard Garry, Tribal Council
Ron Samuels, Gaming Commission Director
Gladys Abrahamson, Gaming Commission Chair
Scott Wheat, In-house Attorney
Scott Crowell, Attorney
Judy Shapiro, Attorney
Bruce Tower, Paralegal
Mike Bielecki, Political Consultant

(The consultation with the Spokane Tribe of
Indians began at 10:01 a.m.)

1 MR. HOGEN: Welcome to this consultation session.

2 I'm Phil Hogen, Chairman of the National Indian Gaming
3 Commission. We're gathered here in Tacoma, on July 25th, to
4 discuss proposals that the National Indian Gaming Commission
5 made in the Federal Register, on May 25th, with respect to
6 definitions and classification standards we have under
7 consideration that relate to distinguishing equipment one
8 can use to play uncompacted Class-II games as opposed to
9 what would be used for compacted Class-III tribal gaming
10 activities.

11 With us here today is Commissioner Chuck Choney. We are
12 the Commission these days. And Natalie Hemlock, from our
13 Washington office and assistant to the Commission, is here.
14 John Hay is with the Office of the General Counsel. You
15 know Randy Sitton, who is our regional director from
16 Portland. Penny Coleman is our acting general counsel, and
17 Michael Gross is an attorney from her office.

18 We have Gary Peterson from our Portland office, and Alan
19 Phillips is from our Spokane (sic) office. They're here
20 assisting us in this matter.

21 MR. PHILLIPS: I'm from Sacramento.

22 MR. HOGEN: So that having been said, would you
23 please introduce yourselves to us and tell us how you're
24 affiliated with the tribe and the gaming operation so our
25 court reporter will know who it is that's speaking.

1 MR. CROWELL: I'm Scott Crowell, legal counsel to
2 the Spokane Tribe.

3 MS. SHAPIRO: I'm Judy Shapiro, assistant to Scott
4 Crowell.

5 MR. NICODEMUS: My name is Gerald Nicodemus. I'm
6 on the Tribal Council of the Spokane Tribe.

7 MR. WHEAT: Scott Wheat. I'm an attorney with the
8 office of the Spokane Tribal Attorney.

9 MR. GARRY: I'm Richard Garry, Tribal Council.

10 MR. TOWER: Bruce Tower. I work for the Crowell
11 Law Office. I'm here today on behalf of the Spokane Tribe.

12 MR. BIELECKI: I'm Mike Bielecki. I'm a political
13 consultant for the tribe.

14 MR. SAMUELS: Ron Samuels, Spokane Tribe, gaming
15 commission director.

16 MR. NICODEMUS: First of all, I'd like to take
17 this opportunity to thank the NIGC for allowing us to come
18 in front of you and consult. We understand that's part of
19 the regulations and everything.

20 To start off, I feel that, frankly, we are really
21 disturbed by what we have read from the NIGC, the proposed
22 standards. I guess, basically, what it looks like, to us
23 anyway, is that you're trying to accomplish something that
24 you can't win in court. You're trying to do it through
25 other means, and that disturbs us.

1 I mean, we've always thought of the NIGC as being, you
2 know, if not friends to the tribe, at least working with the
3 tribes. And I just feel that -- looking at what is
4 proposed, is that we have gone away from that. And it looks
5 more adversarial to both people, now that the NIGC is going
6 to be actually, you know, affecting the Class-II games.

7 And that's one of the only leverages that the tribes have
8 against the states. I mean, the Class II -- if you can't
9 reach anything on the Class III, you go to Class II, and
10 this appears to blur that line.

11 And I understand that you guys are -- you know, you're
12 here to regulate tribal gaming, and we understand the
13 importance of the NIGC, but we feel these have gone outside
14 of the parameters of why you were established. And we just
15 have a lot of concerns on it. Scott?

16 MR. CROWELL: Yes, Gerald hits on an important
17 point, and it's one to where you're trying to look at how
18 this particular action fits in with the larger scheme of
19 things. And I know, to some of you, this may sound like a
20 broken record, but it's an unresolved issue; and that is,
21 the Class-III gaming is still the primary monetary force of
22 the industry.

23 And tribes try to get compacts. In fact, later, we would
24 like, outside of the context of the Class II, to talk a
25 little bit more where we're at in the compacting process.

1 But with the Seminole decision, IGRA is broke, and tribes
2 have lost a tremendous amount of leverage. We can't get the
3 remedy that Congress intended. And I think that people
4 quickly look to those and say, "It's successful. Look at
5 all the compacts out there."

6 Well, I think next question back is: How many of those
7 compacts have provisions in there that are overreaching by
8 the state, and why were the states able to do that
9 overreaching? And it's because of that unfair amount of
10 leverage.

11 And I think you know that the Spokane Tribe has not been
12 shy about the inequities of that; and, you know, you've
13 issued PNOBs based on noncompact gaming. The federal
14 government brought an action seeking an injunction against
15 us. The federal government brought an action seeking a
16 Johnson-Act seizure against us. And, hopefully, we're now
17 at the point of being close to resolving all of those issues
18 through the form of a compact.

19 But, you know, the Ninth Circuit, I think, in the
20 injunction action, was really clear on what the obligation
21 was of the United States as you move forward. And Judge
22 Kaczynski, in the oral argument, really hammered on the U.S.
23 attorneys, saying: "Why are you even here? You should be
24 working with the tribe to put the tribe in a position that
25 Congress intended when it enacted it, and I'm going to

1 reverse the District Court's issuance of an injunction,
2 because enforcement action is not appropriate against
3 non-compacted gaming when the reason for a lack of a compact
4 is the State's refusal to consent to the negotiation/
5 mediation process in IGRA."

6 And it laid out a number of alternatives of what the
7 federal government might do to try to restore that balance.
8 And when you look at -- and the reason I'm talking about
9 that in the context of these Class-II regulations is one of
10 the few pieces of leverage that the tribes have is: "State,
11 if you don't give us a compact, we'll still operate a gaming
12 facility without you, with some economic liability, not as
13 viable as Class-III gaming, but still viable."

14 And that became critically important when the Seminole
15 court took out the tribe's ability to sue the states on bad
16 faith. So when I look at these regulations, I -- I have to
17 ask myself how -- well, the question that I ask back to you
18 is: How do these regulations further the United States'
19 obligation to try to restore the balance in IGRA that
20 Congress intended?

21 MS. SHAPIRO: Let me supplement that. In the same
22 context, I'm sure you're all aware the Seminole Tribe lost
23 the ability to sue for a compact but had the nugatory right
24 to seek procedures from the Secretary. Seven and a half
25 years after those procedures were requested, they're still

1 not issued. The Seminole Tribe is facing loss in Florida,
2 and the only thing that is keeping them afloat is Class-II
3 gaming. And obviously, we're not representing the Seminole
4 Tribe here, but as part of the overall context, if you can't
5 get a compact and you can't get procedures, and Class-II
6 gaming is no longer viable, there's really nothing for the
7 tribe. And that three-way squeeze is really intolerable.

8 MR. HOGEN: Well, the federal government's, I
9 guess, response, in part, from my perspective on the
10 National Indian Gaming Commission, to this challenge -- it
11 is a difficult challenge to tribes, since Seminole was
12 decided, to try and clarify what the difference between
13 those technologic aids with which tribes can play Class-II
14 games are and electronic facsimiles of games of chance that
15 are Class III and require a compact to play.

16 What would be the worst-case scenario, I think, for a
17 tribe who found themselves in difficult straits, trying to
18 negotiate a compact, is to push the envelope, put something
19 on the gaming floor, purportedly as Class II, that crossed
20 that line into an electronic facsimile, and, therefore,
21 found their whole facility closed and the revenue stream
22 stopped because they were playing uncompact Class-III
23 gaming.

24 It's difficult right now to say what is and what isn't,
25 because of that lack of clarity, and so it would be useful

1 to tribes who are trying to negotiate compacts, that are
2 making investments in Class-II equipment and so forth, to
3 know, crystal clear, what it is they can do under that
4 scenario.

5 Now, I expect, if and when we finalize these regulations,
6 somebody will challenge us. And I think there will be some
7 litigation with respect to whether NIGC had the authority to
8 do what it did or did it in accordance with the
9 Administrative Procedures Act and so forth.

10 And that will probably be a good thing; that is, that
11 will bring needed clarity to where we are. And if a court
12 says, "NIGC, you didn't have the authority to do what you
13 did," why, we'll know more than we know now. If they say,
14 "Yeah, you had the authority to do this and that's the law
15 of the land," we'll be better served, I think. And tribes
16 like Spokane and like Seminole will know better where they
17 can go and what they can do.

18 MR. CROWELL: Maybe this folds into the second
19 part of where we could go, but it begs the question. When
20 you're looking at using your rulemaking authority to create
21 clarity regarding Class-II games, and we're doing it in the
22 context of IGRA being broken, the Seminole decision being
23 out there, and we're doing it in the context of taking the
24 language that was in the Act itself, and the legislative
25 history that was done in 1988, and with the idea that tribes

1 were entitled to use maximum flexibility to use electronic
2 aids in Class-II gaming where we would then expect, in that
3 environment, to have our trustee, the NIGC, interpret that
4 language in a manner that was -- if there's ambiguities,
5 interpret them in favor of the tribes and put in a liberal
6 reading of what Congress intended; not outside of what
7 Congress intended, but a liberal reading of what they did
8 intend.

9 When you look at the words "electronic aids" and you look
10 at them in the legislative history of maximum flexibility,
11 and then you look at this proposed regulation, we see a
12 disconnect. We don't understand why you put technical
13 requirements on the game that don't appear to change the
14 fundamental characteristics of the game in terms of what's
15 required in order for winners to be determined and multiple
16 players playing for, you know, a single prize -- the
17 fundamental characteristics of the game that have been
18 identified by the courts.

19 But instead, these regulations appear to be restricting
20 the way that game is to be played as opposed to providing
21 clarity as to what is and is not bingo. And that's where we
22 see a disconnect and don't understand how these restrictions
23 take the game that's bingo and makes them not bingo if they
24 run afoul of these restrictions.

25 MS. SHAPIRO: I think, really, the question is the

1 essential characteristics of a bingo game as set forth in
2 the statute and as recognizable in the statute, and the rest
3 of them do not pertain to the fundamental characteristics.
4 How long you take to daub, how long between daubs, how long
5 to release the single ball on that second release that
6 you've got in your rule. It says "N minus one." It says
7 the first 35 balls take 2 seconds to release. Then the next
8 release may be just one ball.

9 Why does it take two seconds to release? Why does it
10 take two seconds to daub that? Why do we have to get to the
11 10-second game to preserve incidental characteristics rather
12 than the essential ones? And why do tribes have to wait and
13 watch their customers leave in order to have these false
14 distinctions?

15 MR. HOGEN: Well, one of the -- I guess, the
16 threads that kind of came through to me--the reading of the
17 Indian Gaming Regulatory Act, the legislative history, the
18 case law that's interpreted it since then--is that a
19 characteristic of bingo and pull tabs is that it's not the
20 machine that's doing it; it's the players that are doing it.
21 Or it's in the paper if it's pull tabs, so to speak.

22 And with respect to bingo, that means you've got to have
23 that card, and you call the numbers, and the player covers
24 when the numbers are called. That means, to me, player
25 participation. It means there needs to be an interval there

1 for the player to participate.

2 Now, perhaps our suggestion or our requirement of two
3 seconds isn't ideal, and we'll continue to study that. But
4 we do think it is appropriate to specify that there be this
5 interval so that there can be the player participation that
6 characterizes the play of bingo.

7 Some machines that purportedly are being played as Class
8 II can be played by pushing the button once and the machine
9 does all the rest. That is an electronic facsimile of a
10 game of chance that is Class III, in my view. And we're
11 trying to permit a fun, profitable, attractive game that can
12 be played in Class II but doesn't cross that threshold where
13 it becomes a Class-III electronic facsimile of a game of
14 chance.

15 MS. SHAPIRO: Can I ask for a clarification on
16 this one thing? You're not saying that, a pull-tab device,
17 you have to push a button more than once, are you?

18 MR. HOGEN: No.

19 MS. SHAPIRO: I just want to be clear on that.

20 MR. HOGEN: No. No. The MegaMania case has said,
21 in part, the game is outside the machine, the players are
22 playing. The Lucky Tab 2 case said the game is not in the
23 machine, it's in the paper. Those were the two elements
24 that I was trying to identify.

25 MS. SHAPIRO: I just wanted to make sure we

1 weren't going further backwards.

2 MR. HOGEN: But that might be something we want to
3 consider.

4 MS. SHAPIRO: No, no, no, no.

5 (Laughter.)

6 MR. CROWELL: We will be following up the oral
7 consultation here, which we thank you for, with written
8 comments that we'll have in by the August 23rd date. We've
9 heard that there may be some fluidity, that that date might
10 change. Is it still an August 23rd date at this point?

11 MR. HOGEN: There have been requests that we have
12 a public hearing, and we may well do that. And if and when
13 we announce that, we may adjust these dates to try to
14 coordinate all this stuff. So that's very possible, but
15 right now, the date is August 23.

16 MR. CROWELL: We do have a couple of things that
17 we'd like to talk to you about outside the scope of the
18 Class-II consultation, unless Gerald or any one of the
19 Spokane team have anything else to say in the context of the
20 Class II.

21 MR. NICODEMUS: I guess, in closing, Phil, I just
22 hope you guys take this to heart, and I hope we can work
23 with the NIGC. Our biggest fear is that you're going
24 through the motions and this is a done deal and no matter
25 what we say in our consultation, it's still going to happen.

1 And that's our biggest fear, and that's why we're making
2 ourselves available at any time to try to get our point
3 across.

4 And, you know, we realize we're not representing
5 everybody across the country, but we just see that we can do
6 a lot of justice to a lot of different tribes by speaking
7 up. And we have always spoken up, and we really thank you
8 for hearing us. I mean, it's great that you let us come in
9 front of you and hear what we have to say.

10 MS. COLEMAN: Could I ask a couple of questions
11 about your Class-II facility? Could you tell me how many
12 Class-II games you have?

13 MR. NICODEMUS: Zero.

14 MS. COLEMAN: Okay. So yours are all Class III?

15 MR. NICODEMUS: Yes.

16 MR. CROWELL: I do want to point out that Gladys
17 Abrahamson walked in late. She is the chairman of our
18 tribal gaming commission.

19 MR. HOGEN: Believe me, we're going to take to
20 heart the comments we receive. If we were just going
21 through the motions, Chuck and I wouldn't have scheduled it
22 the way we are, where we leave for Ontario, California, at 8
23 o'clock tonight and start doing this at 8 o'clock tomorrow
24 morning. We'd have done it in a more fun fashion. But no,
25 we seriously will consider what's suggested.

1 Obviously, we come into this with some firmly held ideas,
2 but we're going to measure that against what's suggested.

3 MR. CROWELL: Let me, if I can, just expand on
4 Penny's question, and then I think that we could get closure
5 and settle our next issue. In some respects, some might
6 say, "Well, you're not operating Class II. You don't have a
7 dog in this fight." You know, Spokane is probably a good
8 example, and we don't think that there's any Class III --
9 hopefully, very soon, we'll be in a Class-III-compact
10 environment. And we're very close to an agreement with the
11 State of Washington.

12 But until we have a compact, there's still a possibility
13 that things could fall apart. Although we have been
14 successful in fending off federal enforcement efforts,
15 there's still questions that are very much up in the air,
16 and it's in litigation that the tribe may ultimately lose.

17 We've seen situations to where the Wisconsin Supreme
18 Court ruled the compacts invalid and turned around and ruled
19 them to be valid, thankfully. We have the New York Supreme
20 Court ruling Turning Stone to be invalid. You've got legal
21 challenges in the State of Oregon. We've got challenges
22 against the Confederated Coos Tribe, that, if that challenge
23 were successful, could invalidate all of the Oregon
24 compacts.

25 Until we have a true Seminole fix, there is no truly safe

1 environment for tribes in the Class-III context. And having
2 the ability to go to Class-II gaming is one of the -- is the
3 insurance policy that tribes need.

4 And, you know, even with our interpretation of the
5 fundamental characteristics of bingo, the Class-II game is
6 never going to be able to compete head-to-head with Class
7 III. But when you're looking at staying open and reducing
8 your workforce as opposed to closing down and laying off
9 your entire business, it becomes a very critical necessity
10 to the tribes to preserve their ability to have viable
11 Class-II games to play.

12 MR. HOGEN: Okay. Thank you. We'll then conclude
13 the discussion related to the Class-II issue.

14
15 (The consultation with the Spokane Tribe of
16 Indians concluded at 10:23 a.m.)
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A P P E A R A N C E S

For the Yakima Nation
P.O. Box 151
Toppenish, Washington 98948

Michael Hoptowit, Casino General Manager
Jay Ellenberger, Director of Machines
Max Corpus, Jr., Tribal Council
Ralph Sampson, Jr., Tribal Council
Portia Shields, Tribal Council
Vera Hernandez, Tribal Council
Dawn Vyvyan, Lobbyist

(The consultation with the Yakima Nation
began at 10:49 a.m.)

1 MR. HOGEN: Good morning. Welcome to this
2 government-to-government consultation session. We're
3 convened here in Tacoma, on July 25th, 2006, pursuant to the
4 publication in the Federal Register, on the 25th of May, of
5 some proposals that the National Indian Gaming Commission
6 has made regarding the definitions that are used with
7 respect to Class-II and Class-III gaming, and some proposed
8 standards that would attempt to clarify the distinctions
9 between Class-II equipment that can be played without a
10 Tribal/State compact and that that requires a Class-III
11 compact for the tribe playing it.

12 I'm Phil Hogen, chairman of the National Indian Gaming
13 Commission. With me is Associate Commissioner Chuck Choney.
14 And then we have, from Washington, D.C., Natalie Hemlock, an
15 assistant to the Commission; and John Hay is a member of the
16 Office of General Counsel, one of our attorneys. Seated
17 next to him is Randy Sitton, our regional director from
18 Portland, who you know. Michael Gross is also an attorney
19 with the Office of the General Counsel. We've got Alan
20 Phillips from our Sacramento regional office, and Gary
21 Peterson, also from the Portland office.

22 So that's who we are. If you would please introduce
23 yourselves so the court reporter will know who it is that is
24 speaking, we'd very much like to hear your comments or
25 questions regarding the proposals.

1 MS. HERNANDEZ: My name is Vera Hernandez. I am a
2 member of the Yakima Tribal Council.

3 MS. SHIELDS: My name is Portia Shields. I'm a
4 member of the Yakima Nation Tribal Council also.

5 MR. CORPUS: My name is Max Corpus, from the
6 Yakima Tribal Council.

7 MR. SAMPSON: Ralph Sampson, Jr., member of the
8 Yakima Nation Tribal Council.

9 MS. VYVYAN: Dawn Vyvyan, the attorney for the
10 Yakima Nation.

11 MR. ELLENBERGER: Jay Ellenberger, director of
12 machines.

13 MR. HOPTOWIT: Michael Hoptowit, general manager
14 for the Yakima Nation Legends Casino.

15 MR. HOGEN: Thank you. Are there comments or
16 questions that you'd like to raise regarding the proposals
17 that we've published in the Federal Register?

18 MR. SAMPSON: Mr. Chairman, I'd like to have Ms.
19 Dawn Vyvyan here read the points that we'd like to have
20 entered into the Federal Register.

21 MS. VYVYAN: Thank you, Mr. Sampson. Again, Dawn
22 Vyvyan, for the record. The council has reviewed the points
23 that I'm going to be reading into the record, and then they
24 would like to talk to the commissioners subsequent to that.
25 So I'll just go through, point by point.

1 First of all, the Yakima Nation believes that this is not
2 a government-to-government consultation.

3 MR. GROSS: Excuse me, Ms. Vyvyan. I apologize
4 for interrupting. I realize it's rude. The Tribal Council
5 is sitting here. The National Indian Gaming Commission is
6 sitting here. I don't understand why this isn't a
7 government-to-government consultation.

8 MS. VYVYAN: Okay. That's duly noted for the
9 record. I'll continue with my points.

10 "The Yakima Nation is providing their initial comments to
11 the National Indian Gaming Commission on the proposed
12 regulation on Class-II machines. Comments that are more
13 formal will be provided at a later time. This meeting is
14 considered to be merely a comment meeting.

15 "In Washington, the tribes work very closely together to
16 protect the integrity of gaming. Class-II gaming is
17 regulated and standardized to fit the Indian Gaming
18 Regulatory Act requirements. Washington tribes interact on
19 a government-to-government basis to protect our casinos from
20 illegal activity. The machines we use clearly comply with
21 that law. Washington tribes should not be penalized by
22 these regulations for problems the National Indian Gaming
23 Commission may be having with compliance in other
24 jurisdictions."

25 And I'll just use "NIGC" for brevity purposes from here

1 on out.

2 "The NIGC technical standards have not yet been published
3 and provided to the tribe for comment. The Yakima Nation
4 requests that the official comment period be postponed until
5 the technical standards are available. It is not possible
6 to analyze the proposed classification standards in 546
7 without the technical standards accompanying them.

8 "The Yakima Nation also asks that there be a
9 public-hearing process conducted on 546 and the upcoming
10 technical standards. It is difficult to comment to the NIGC
11 without knowing how this rule affects other tribes, the
12 industry, and our vendors. The public record needs to be
13 available to the tribe to evaluate so that a thorough and
14 complete comment may be done. When will the public record
15 be available to the tribe for comment?" Or to include in
16 its comments.

17 "The NIGC states that there is no taking of property.
18 The current Class-II machines are the property of the tribe.
19 The effect of this proposed rule is a taking of property
20 without just compensation.

21 "The economic impact this regulation imposes on the
22 Yakima Nation is devastating to our government. Our
23 government programs and services rely, in large part, on the
24 proceeds from Class-II gaming. The tribe cannot continue
25 our government programs on Class II alone. To be required

1 to purchase, license, certify, and install all new machines
2 would have the effect of putting our government gaming and
3 those government programs at a standstill. It will lay off
4 hundreds of employees in our community.

5 "The loss of operating revenues alone for shutting down
6 the machines would be close to \$50 million. Additional
7 costs for purchasing, licensing, certifying, installing,
8 training, rewriting internal controls, and redesigning our
9 technology may cost millions more. All these costs are yet
10 unknown. Jobs, tribal services, and the cost of waiting
11 time for any new machines to be certified and 'come on line'
12 would be devastating to our tribe and its members. This
13 proposed regulation would virtually bankrupt our Class-II
14 government gaming. The tribe has made financial commitments
15 for expansion of its casino. These commitments may be
16 jeopardized if the tribe is put into an uncertain position
17 with regard to Class-II gaming. This imposes a great
18 uncertainty for our creditors, our builders, our casino
19 staff, and lenders, with the possibility of placing our
20 credit with lenders in jeopardy.

21 "This proposal is not about protecting the public from
22 being confused about whether or not they are playing bingo
23 or a Class-III machine. The tribe is operating a readily
24 distinguishable machine. Our machines are in a separate
25 area of the casino. The signage entering into this area

1 clearly identifies it as a bingo area. It is solely used
2 for the game of bingo. It is arbitrary and capricious to
3 decide that, by changing the screen, delaying the play,
4 requiring a 20-percent payout, that the public or consumer
5 will be assured that they are now playing bingo. There has
6 never been a question of customer 'confusion' about that
7 game and what game they are playing under the current
8 technology. There is a bingo card clearly displayed on the
9 machine, and the machine says 'bingo,' with instructions on
10 how to play. These proposed rules make the assumption that,
11 by slowing down the play, the bingo player will now know
12 they are playing bingo. It's an insult to them to assume
13 they cannot determine the difference.

14 "IGRA statutorily has three requirements for bingo.
15 These are outlined in 25 U.S.C. 2703(7)(A). The Class-II
16 bingo that Yakima Nation is operating meets those
17 requirements. We notify our vendors that all Class-II
18 machines have to meet IGRA standards. The Yakima Nation is
19 conducting gaming pursuant to federal gaming law. The NIGC
20 has arbitrarily decided that these machines do not meet
21 IGRA's requirements and has developed their own
22 requirements. The Indian Gaming Regulatory Act regulates
23 Indian gaming. As you know, the National Indian Gaming
24 Commission executes the law. It does not have the authority
25 to make new law, but simply to be the executing arm of the

1 law. These proposed rules are beyond the NIGC's authority.
2 NIGC is not a legislative branch of the government, nor
3 should they be.

4 "The requirement of a prize being a 20-percent payout
5 renders the game to be a non-gaming event. There is no
6 gamble, and there's no game of chance. The two-second delay
7 of play is arbitrary. By requiring this, there is no
8 assurance that more than one player is playing the game, nor
9 does it solve that more than" -- sorry. "By requiring this,
10 there is assurance that more than one player is playing the
11 game, does not solve the more than one game" -- "one-player
12 rule." (sic.) "The current Class-II machines are linked to
13 make sure other players come into the game." Current
14 machines that the Yakima Nation is operating.

15 "Questions about grandfathering of the current machine
16 need to be addressed. The proposed rule requires compliance
17 within six months of the rule adoption. This cannot be
18 done. The time for certification of the new machine may
19 take up to 36 months. What occurs during that time it is
20 being certified? Manufacturers have confirmed that the time
21 for retooling and having a machine ready that will meet
22 these standards may take up to 18 months. To change the
23 infrastructure of the casino will take another six months.
24 To certify the machine may take another six months."

25 That's the end of our written comments.

1 MR. HOGEN: Thank you. I think I got the drift of
2 most of what you said. One of the things I am having a
3 little trouble with, you mentioned that requiring that the
4 prize constitute 20 percent of the wager takes it out of the
5 wager category. Perhaps I misunderstood that. Can you
6 explain that to me?

7 MS. VYVYAN: The way it was explained by the
8 manufacturer, if there's a requirement there be a 20-percent
9 payout, that the machine is going to work that 20 percent
10 in. So there really, in effect, won't be a payout, and the
11 customer will simply be paying into the machine whatever
12 they get out. Otherwise, you're requiring that the game --
13 that the machine have an automatic 20-percent prize, and the
14 machine probably won't do that, so it's deceiving to the
15 customer.

16 MR. HOGEN: Well, what we intended there -- the
17 concern that evolved as we looked at various proposals for
18 devices was: The objective of winning the bingo, winning
19 the game-ending prize, seemed to kind of go away, and the
20 main objective, or purpose, was to win one of the interim or
21 consolation prizes. That seemed to fly in the face of one
22 of those three requirements you mentioned, set forth in
23 IGRA, about the one to win the game is the first to cover
24 the pattern.

25 So we thought there needs to be some significance to the

1 bingo pattern; and while it doesn't have to be the biggest
2 prize, certainly it should have some significance, at least
3 not less than a penny, and not less than 20 percent of the
4 amount that you bet. That gives it a little, albeit not
5 great, significance to the one who wins the bingo game. I'm
6 not sure why that's unfair or inappropriate.

7 MS. VYVYAN: Well, maybe the technical staff, the
8 casino staff, can help on this, but the way it was explained
9 is that it makes it a non-gaming event, because you would
10 just work that into the figures, you'd work that into the
11 machine.

12 MR. HOGEN: Okay. Well, I'd be happy to hear any
13 further explanation on that.

14 MR. ELLENBERGER: Yeah, Jay Ellenberger, Yakima
15 Legends Casino, machines director. We understood that the
16 prize was based per player, you know, so when the player
17 goes in to initiate the game, 20 percent of their play has
18 to go back to them, and that is what the interpretation was.

19 MR. HOGEN: If they are the winner of the bingo
20 game.

21 MR. ELLENBERGER: Just if they're the winner of
22 the bingo game? Because the way the interpretation came
23 across was that what you put in, you get 20 percent of it
24 back automatically.

25 MR. HOGEN: No. If that's what we said, we said

1 it wrong. What we intended was to say, if you bet a dollar
2 to play and you win the bingo game, you can't win less than
3 20 percent of what you bet. You might actually lose 80
4 cents if you won the bingo game, but at least you'd have won
5 something; you'd have won 20 percent, or 20 cents, of that
6 bet.

7 Now, all the other players wouldn't get anything back,
8 because they didn't win. They might qualify for a
9 consolation prize or progressive prize or an interim prize
10 if they got the right pattern, but, you know, I think that's
11 still gaming. It seems to me it's more gaming than not, if
12 you say, "If you win, you're going to get something,
13 something of some substance."

14 MR. ELLENBERGER: No, and that makes sense. That
15 makes sense that that pool would be there, because you're
16 playing a bingo game. So I just believe that the
17 interpretation that we got out of it was that what went in,
18 20 percent would automatically be coming back to that same
19 customer; not based on a win.

20 It just was based on the play. So it made it sound like
21 we've got to figure out a way to get that money back to
22 them, in the prize with the game play, just for that one
23 person.

24 So I believe that that was the interpretation that we all
25 got out of it. So putting the win on it actually makes

1 sense.

2 MR. HOGEN: Okay. Thank you.

3 MS. COLEMAN: Could I ask a few questions about
4 the games at the tribe's facility? Who can answer? I
5 wanted to know: How many Class-II machines do you have?

6 MR. ELLENBERGER: We're presently operating 500.

7 MS. COLEMAN: 500?

8 MS. VYVYAN: Can you please identify yourself for
9 the record?

10 MS. COLEMAN: Oh, I apologize for being late. I
11 had to get my stuff out of our hotel room. I'm Penny
12 Coleman. I'm the acting general counsel.

13 MS. VYVYAN: Thank you.

14 MS. COLEMAN: There are 500 Class-II machines.
15 Are they all bingo machines?

16 MR. ELLENBERGER: Correct.

17 MS. COLEMAN: What kind of bingo machines are
18 they?

19 MR. ELLENBERGER: We've got Bally's Class-II
20 bingo, and we've got Rocket, Class-II.

21 MS. COLEMAN: Are those machines that have two --
22 two--

23 MR. GROSS: Video.

24 MS. COLEMAN: --video components, or are they ones
25 that have just one video?

1 MR. ELLENBERGER: Just one.

2 MS. COLEMAN: Just one video component.

3 MR. ELLENBERGER: Correct.

4 MS. COLEMAN: So is part of the issue that, with
5 the one video component, it would be difficult to have half
6 of the bingo game on the video?

7 MR. ELLENBERGER: Yes.

8 MS. COLEMAN: And are your games one-touch games,
9 or are they three-touch games?

10 MR. ELLENBERGER: Two-touch, three-touch, yeah.
11 They're Bally's; Class-II is a two-touch daub, and Rocket is
12 a three-touch.

13 MS. COLEMAN: Okay. And do you have Class-III
14 machines also?

15 MR. ELLENBERGER: Correct.

16 MS. COLEMAN: So how do you find that they
17 compare, these Class-II, two- and three-touch games, to the
18 compacted games?

19 MR. ELLENBERGER: Bally's Class II is very similar
20 to the Bally's Class-III games that we have, because they
21 are also a two-touch machine.

22 MS. VYVYAN: Can I interrupt here a second? Our
23 Class-III machines have been negotiated with the State and
24 designed by the State and certified by the State. And that
25 came over a litigation that occurred over a long period of

1 time. And so the State has agreed that the tribes are
2 operating the Class-III machine, and we did that as a result
3 of a settlement, or agreed-upon settlement, in mediation.

4 So I don't think, at this point, it's appropriate for us
5 to distinguish those two machines, because it's a matter of
6 record what those three Class-III machines are.

7 MS. COLEMAN: Yes, I understand. I'm just trying
8 to get a feel for -- when we're talking about economic
9 impact, I want -- I was trying to figure out --

10 MR. SITTON: Win per machine per day.

11 MS. COLEMAN: Yeah. Are you doing better on the
12 Class II than the Class III? What kind of distinguishing
13 play features do you see? How is it impacted?

14 MS. VYVYAN: Part of the economic impact of the
15 Class-III machines is that, by compact, we are allocated a
16 certain number of machines.

17 MS. COLEMAN: Mm-hm.

18 MS. VYVYAN: Each tribe in Washington is allocated
19 675 machines. Some of the tribes have those fully operating
20 and some don't. Some lease part of them out. Other tribes
21 are lessors, some are lessees.

22 The Yakima Nation operates all 675, so we're limited in
23 terms of numbers of machines. That is one of analysis -- or
24 part of the economic impact, the effect that it has on the
25 tribe.

1 So the Class-III machines, there is a limited amount of
2 number. The tribe is considering expanding its casino and
3 adding more Class-II machines.

4 MS. COLEMAN: Okay.

5 MS. VYVYAN: So in large part, the proceeds from
6 Class II go into government operations of the tribe, that
7 support its social programs: education, healthcare,
8 etcetera.

9 MS. COLEMAN: Do you find that the Class II are
10 better -- or not better. Do the players enjoy the Class II
11 more than the Class III, or the Class III more than the
12 Class II? Is there a distinction?

13 MR. HOPTOWIT: Michael Hoptowit, general manager.
14 Mr. Chairman, if I may, I think one thing that should be
15 mentioned is that -- again, just reiterating what Dawn
16 Vyvyan had just mentioned, is the tribe has looked at this
17 as an opportunity because of the current Class-III agreement
18 with the State, and it minimizes the amount of revenue, to
19 impact the tribe on an economical standpoint for providing,
20 you know, the betterment of the general welfare, as it's
21 stated. And so Class II provides an opportunity for a tribe
22 such as ours, at the Yakima Nation.

23 And I think it would be a little premature, on the Class-
24 II side, to determine anything at this point, because it's
25 -- it's -- the Bally's, for example, is fairly new to the

1 state, versus Class III that's been in for X amount of years
2 now. So it's not really something that could be determined
3 as of yet, versus some more history behind it, to be able to
4 monitor the player and the increase, or the decrease, for
5 that matter, just to answer the question.

6 MR. HOGEN: Do you know how long it takes to play?
7 Have you kept track of how long it takes to play the
8 compacted two-touch game? Can that be played in two
9 seconds, or .5 seconds, or seven seconds?

10 MS. VYVYAN: Class II isn't compacted with the
11 State.

12 MR. HOGEN: The Class II is what I'm asking about.

13 MR. HOPTOWIT: Mike Hoptowit again. From my
14 standpoint, it -- just basically reading what I understand
15 some of the proposals are, it seems that the Class II would
16 take quite a little bit longer than the Class-III games to
17 play.

18 MR. HOGEN: But how long does the Class-III game
19 take to play? That's what I'm inquiring about.

20 MR. ELLENBERGER: Probably half a second to play,
21 by the time it grabs the ticket and brings it back down.

22 MS. COLEMAN: So the Class-II games take several
23 -- a couple seconds? Or, how long do they take, do you
24 think? I know this is not scientific.

25 MR. ELLENBERGER: Yeah. I would say, at the most,

1 two seconds. You know, they pretty much play the same.

2 MS. COLEMAN: Okay.

3 MR. HOGEN: Now, I assume not every machine, even
4 on a busy night, would then -- Class-II machine, somebody
5 could play 120 times in a minute. The game could start and
6 be over in that period of time, but there would be some
7 interval before the next play, as would be true of Class II.
8 If it takes two seconds to play, you're not going to
9 necessarily play 30 games a minute. But it's slower than
10 the other.

11 Other comments or questions? Yes, ma'am.

12 MS. HERNANDEZ: This is Vera Hernandez. What
13 difference does it make of how much time it takes to play a
14 Class II or the Class III?

15 MR. HOGEN: Well, we're trying to get our arms
16 around this economic-impact business, so we're trying to
17 gather some information in that connection. In terms of why
18 did we say there has to be this much time to daub, I think
19 that evolved from our study of the Indian Gaming Regulatory
20 Act and the legislative history and the court cases that
21 have been decided, and kind of a theme of the court cases is
22 there's got to be player participation; that is, the game is
23 not all in the machine, but rather the players have to be
24 playing.

25 First of all, it has to be more than one player.

1 Secondly, the machine can't do it all. If it does, it
2 becomes an electronic facsimile of a game of chance. And
3 bingo -- I think your counsel went through the elements to
4 bingo. You have to have a card, it has numbers, numbers are
5 called, and the player covers when the numbers are called.

6 Well, that means player participation, and there has to
7 be some interval there for the players to have the
8 opportunity to participate. Maybe two seconds isn't the
9 perfect time. We're studying that, but that's what we came
10 up with after giving it a lot of thought and looking at
11 various models. So we want to be sure that there is a
12 recognizable difference between Class II, that doesn't have
13 to have a compact, and Class III that does.

14 If the tribe finds itself in a situation where it's
15 offering uncompact Class-III games, it's going to be in
16 violation, and it runs the risk of not only shutting down
17 Class-II, supposedly, games, but the whole operation. That
18 would be a devastating impact. We don't want that to happen
19 to Yakima or any tribes, so we want to provide some clarity
20 here as to what tribes, in Washington and everywhere, can
21 do, what machines they can invest in, so there's not doubt
22 about that; so that somebody isn't going to come along
23 tomorrow and say, you know, that that's unlawful; and
24 provide some clarity.

25 So we're trying to gather this information to look at

1 what we've drafted, to be sure that we're doing the right
2 thing. We said, "You can use technologic aids to play
3 bingo, but you can't use an electronic facsimile." And we
4 are instructed to draft federal standards. We think this is
5 a standard that will assist the industry once we get to the
6 right place.

7 MR. CORPUS: Mr. Chairman, Max Corpus, Yakima
8 Nation Tribal Council. You know, now that you've heard the
9 concern regarding this regulation that will greatly impact
10 our tribe as well as many of the other tribes, my question
11 is: Comments gathered from these meetings from all the
12 tribes, other than the NIGC reviewing this, who else will be
13 receiving this information? Will this go on to other
14 entities of the government, legislation and so on?

15 MR. HOGEN: Well, ultimately, the National Indian
16 Gaming Commission will decide: Are we going to promulgate
17 regulations, and what will they look like? Right now,
18 that's Chuck and I. So we will be making the decision.

19 But this would hopefully be an open process. Once we
20 finish our consultation, we will publish, probably on our
21 Web site, a transcript of all of these proceedings. We will
22 also receive lots of written comments, and we'll review all
23 of that and try to do the right thing.

24 Now, I won't be surprised, if we decide to go ahead and
25 do this, that, the day after we do it, somebody doesn't sue

1 us and says, "You went too far, NIGC," or, "You didn't have
2 the authority to do that," and that's not a bad thing. You
3 know, we need clarity. The industry needs to know what they
4 can and can't do.

5 And if the court says, "NIGC, you went too far,"
6 hopefully they're able to give us guidance, and we'll do the
7 right thing. They may say, "You have the authority to do
8 that, and that's the law of the land." So it, necessarily,
9 is going to be kind of a long process. But we've been doing
10 this for a couple of years now, and we think there's really
11 a desperate need to bring some clarity.

12 MR. GROSS: Excuse me, Mr. Chairman. There's one
13 part of Mr. Corpus's question about what other entities of
14 the government are involved in this. The short answer is
15 that there is none. The decision-makers are sitting here.

16 The rulemaking process, whether for this agency or for
17 any other agency, is the publication of the proposed rules,
18 which you have; the receipt of comments in written form or
19 here in consultation; and then the Commission is obligated
20 to take those comments and to respond to them, if and when
21 they publish either another proposed rule or a final rule.
22 So that decision is not made anywhere but by the two men
23 sitting at the table with you.

24 MR. CORPUS: Thank you.

25 MR. SAMPSON: Thank you, Mr. Chairman. Ralph

1 Sampson, Jr., member of the Yakima Nation Tribal Council.
2 My question is: Do we have a memorandum of understanding
3 with the National Indian Gaming Commission? Between the
4 National Gaming Commission and the Yakima Nation.

5 MR. HOGEN: There might be one regarding the
6 processing of your fingerprints.

7 MR. SITTON: Yes, there is.

8 MR. HOGEN: Would there be any others?

9 MR. SITTON: That's the only one that I can think
10 of.

11 MR. HOGEN: The tribal gaming regulatory body and
12 Gaming Commission needs to license you folks, and in
13 connection with that, we check to see if applicants have
14 criminal histories. So we ordinarily are the conduit to
15 send those fingerprints to the FBI and get the information
16 back to you.

17 The FBI insists that, if we do that, people who get that
18 information have to take an oath that they won't disclose it
19 to the wrong people. So to use that process, we have to
20 have an MOU with the tribes who participate. Again, that's
21 kind of a narrow focus.

22 MR. SAMPSON: Thank you.

23 MS. VYVYAN: Just another question about the six-
24 month compliance. You've heard from a lot of tribes
25 throughout the country. You're probably hearing, you know,

1 similar concerns that we have about the six-month compliance
2 and what we do in the meantime, because we are dependent on
3 the revenue that's coming out of our Class-II operations.
4 Has the Commission considered expanding that compliance and
5 addressing the operation of the machines that are currently
6 in the casino?

7 MR. HOGEN: Well, we certainly don't want to bring
8 the Class-II gaming to a grinding halt all over the country.
9 And we gave that some thought before we set up these
10 original time frames. Maybe they're not long enough. We're
11 looking at that.

12 But if you looked at all of the Class-II devices that are
13 on tribal gaming floors today, I think they would fall into
14 several categories -- your Bally machines and so forth. Of
15 course, not every one of those machines doesn't have to be
16 sent to the lab and tested. Rather, Bally's Model 101 or
17 whatever it is would be tested, and once that's certified,
18 it's good to go.

19 And so I expect those machines that are on the floors now
20 would be the first ones in the pipeline, so to speak, to go
21 to those labs to get certified. Now, they may say, "Model
22 101 doesn't comply with this part of the new regulation,"
23 and Bally's may have to reconfigure it. Hopefully, they
24 would be able to do that with some programming and you won't
25 have to reinvent the wheel, so to speak.

1 I expect there will be some out there that can't be
2 modified. But it's our hope and expectation that we'll have
3 a good workable set of regulations and equipment that's in
4 play, given this computer era that we live in, that can be
5 easily and promptly reconfigured.

6 Now, if we learn that it's going to take longer -- this
7 36-month period that you mentioned is kind of new to us.
8 I've not heard that before today. But, you know, I'm
9 certainly hoping that process won't take that long. I
10 expect I will be long gone from the National Indian Gaming
11 Commission when that date rolls around, and I'd sure like to
12 get this done before I go home, so to speak.

13 MS. VYVYAN: Well, just for the record, it's not a
14 figure that we've just thrown out to scare anyone. But it's
15 something that the manufacturers have told us, in terms of
16 retooling, determination of how long it would take to
17 certify and go through that process. So maybe, Jay, you
18 can --

19 MR. ELLENBERGER: Yeah. One other point to go
20 along with that on the time line is you've got Class-II
21 casinos out there that are fully-run Class II that will
22 probably be first in line with the vendors. So we've got to
23 take into account as far as where we stand in the vendor's
24 eyes as far as shipping product out. We would listen to the
25 facts of what it's going to take to redevelop the program,

1 whatever hardware is going to have to go with that, if it
2 has to be a dual-screen type function that we'd have to add
3 to our machines, depending on what the internal controls are
4 that we have to change locally, at ours. But I'm concerned
5 about the shipping dates, as far as our site being able to
6 get those changes and get those -- either upgrades, you
7 know, software changes, those items back to us, on top of,
8 you know, just the six months that they're pushing to get
9 out to the other just fully Class-II operations. So that's
10 one of my concerns.

11 MR. HOGEN: We will study carefully what's
12 realistic and what isn't. I think if you go to the trade
13 shows, probably what's on the horizon for much of the gaming
14 world will be this server-based gaming and downloadable
15 games; and, you know, probably the day will come when
16 transition will be quicker and easier, and we don't want to
17 be unrealistic, because we think the industry is moving in
18 that direction.

19 MR. HOPTOWIT. Mr. Chairman, I was just trying to
20 clarify for myself, again, representing the tribe. I'm
21 hired in place to make the tribe as much revenue as we can,
22 and that's the directive I'm given, as well as to provide
23 employment opportunities to the tribal membership.

24 But in the Federal Register, the clarification on the
25 classification standards, that all was a result -- the

1 question is: Is it a result of findings upon a technical
2 review of the two different types of games, such as a Class
3 III and a Class II? And if so, and certain sanctions you've
4 put onto the tribes and how they operate gaming, what type
5 of considerations would there be for future gaming? I know
6 you touched on it briefly, what the industry calls for.

7 Given the fact it will always be evolving, with the
8 technology today much different than the technology of
9 tomorrow, would this be something that NIGC would be looking
10 at in the same context as far as regulating gaming on tribal
11 land?

12 And I guess the question is: Would this be a continuing,
13 ongoing thing to where we know that the technology today is
14 in fact different than it was yesterday, whether it was
15 Class II or Class III? And both sides are going to continue
16 to grow.

17 So I'm just concerned that, in the future, if more
18 advanced products come out, is there going to be more
19 restrictions, or is it going to be an approach to work with
20 the tribes to continue to allow Class-II and Class-III
21 gaming to continue to grow?

22 MR. HOGEN: As I'm sure you know, we promulgated
23 the minimum internal-control standards back in the late
24 1990s, and we found that, shortly thereafter, they were
25 obsolete, in part, because of technological changes. Things

1 like digital surveillance came along that we didn't know
2 anything about when we first wrote those control standards.
3 I'm sure that will be true of these as well. We will need
4 to make an ongoing effort to keep them current.

5 In fact, when we kind of thought we'd finished the
6 package last April, April of 2005, we had classification
7 standards and the technical standards that were mentioned.
8 And when we were ready to roll them out the door again this
9 spring, we discovered that the technical standards had
10 gotten a little stale.

11 So rather than go out with something that might already
12 be obsolete, we're taking a little longer to get those
13 modern and current. But I'm sure, once we get them
14 published, there will be some new things come along that we
15 didn't think of, and we need to keep them up to date. So it
16 will be an ongoing challenge.

17 So we're not going to chisel in stone, the day we publish
18 this, as far as anybody can ever go. But Congress did
19 chisel in stone, until they amend the Indian Gaming
20 Regulatory Act, the fact that there are two classes; one
21 which you can use technologic aids, the other which, if it's
22 an electronic facsimile, you have to have a compact to play.
23 And we're trying to figure that out.

24 MR. HOPTOWIT: Thank you.

25 MS. VYVYAN: I think our chairman of the committee

1 would like to just have some final words or questions off
2 the record. At that point, I think we're finished with our
3 questions on the regulation, proposed regulation.

4 MR. HOGEN: Okay. We want to thank you for
5 sharing your thoughts with us, and we'll read the written
6 copy of the comments. Thank you very much.

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8 (The consultation with the Yakima Nation
9 concluded at 11:32 a.m.)
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A P P E A R A N C E S

For the Shoshone Bannock Tribes:
Tribal Business Center
Bannock & Pima
Fort Hall, Idaho 83203

Alonzo Colby, Tribal Council Chair
Lee Juan Tyler, Tribal Council Vice-chair
John Kutch, Tribal Council
Glenn Fisher, Tribal Council
Louise Dixey, General Manager
Scott Crowell, Attorney
Judy Shapiro, Attorney

(The consultation with the Shoshone Bannock
Tribes began at 11:36 a.m.)

1 MR. HOGEN: Good morning and welcome to this
2 consultation session. I'm Phil Hogen, chairman of the
3 National Indian Gaming Commission. We are convened here in
4 Tacoma, on July 25th, 2006, pursuant to the NIGC's
5 publication in the Federal Register, on May 25th of this
6 year, of some proposed definition changes and some proposed
7 classification regulations that relate to distinguishing
8 Class-II gaming equipment, that the tribes can play without
9 Tribal/State compacts, from electronic facsimiles of games
10 of chance that are Class-III equipment that require a
11 Tribal/State compact.

12 Here on behalf of the NIGC, in addition to myself, is
13 Associate Commissioner Chuck Choney. Seated next to him is
14 Natalie Hemlock, from our D.C. office; and John Hay is an
15 attorney in our Office of General Counsel. I think you know
16 Randy Sitton, our regional director in our Portland office;
17 and Alan Phillips, back here, from our Sacramento office,
18 assisting us in this process. Penny Coleman is our acting
19 general counsel. And from her office, attorney Michael
20 Gross is also here; and Gary Peterson, an investigator from
21 the Portland office, is here.

22 So perhaps you would introduce yourselves and tell us how
23 you're affiliated with the tribe or the tribal gaming
24 operation, and then we'd be very interested in hearing your
25 comments with regard to our proposals.

1 MR. COLBY: First of all, I want to stand and
2 introduce myself. My name is Alonzo Colby, the newly
3 elected chairman of the Shoshone Bannock Tribes. This is
4 our vice-chairman, Lee Juan Tyler; council member Glenn
5 Fisher, and council member John Kutch. He's our treasurer.
6 Scott Crowell is our legal counsel.

7 If you don't mind, we of the Shoshone Bannock Tribes
8 would like to say a prayer. That's how we start out our
9 meetings, so if we can do that. So at this time, do you
10 want to give us a prayer?

11 (All present stood for a prayer.)

12 MR. COLBY: Thank you. At this time, I just want
13 to say thank you for giving us the opportunity to speak with
14 you today. I know that our tribe -- we're located in
15 southeastern Idaho, and we have a signed Class-III gaming
16 compact with the State, and we've always complied with those
17 regulations.

18 Oh, I forgot to introduce our general manager for our
19 gaming operations. It's Louise Dixey. She's been in
20 involvement with the tribes for many, many years, along with
21 her family; her father Kesley Edmo was a leader of our
22 tribe; and her brother Blaine Edmo. They've been part of
23 our tribe for the last 30, 40 years, so we're grateful and
24 honored to have her as our gaming manager.

25 And anyway, every time I've talked about Indian gaming,

1 it kind of rubs me wrong, because of the rules and
2 regulation changes, so I want to turn it over to our
3 attorney, Scott Crowell. He will be discussing what issues
4 we are concerned with.

5 MR. CROWELL: For the record, also with us is Judy
6 Shapiro, who is assisting us on this matter, and we would
7 like to take a few minutes off the record at the end, to
8 cover a minor matter between the NIGC and the tribe.

9 MR. HOGEN: All right.

10 MR. CROWELL: And I hope you don't get tired of
11 Judy and me, but the message here: Some people would look
12 at Fort Hall and say, "Well, you know, why would we have a
13 dog in this fight?" You know, we have a federally approved
14 compact. That compact provides for -- although we were at
15 loggerheads with the State for a number of years over
16 whether it involved machine gaming, now it clearly does.

17 And, you know, the compact stands up pretty well vis a
18 vis some of the other compacts, both in the state and around
19 the country, in that it does not put market restraints on
20 what we're able to do. So if we have the market for Rocket
21 or for 4,000 Class-III machines, if we did under the current
22 compact, we wouldn't even be here to talk about Class-II
23 gaming. But the reality is we do have a dog in the fight.
24 We've been successful in litigation so far, but there are --
25 there are basically two types of challenges against the

1 operation that we've had to deal with.

2 The first was that, for years, we had an impasse with the
3 State of Idaho. We ultimately agreed to disagree in the
4 context of the Tribal/State compact itself and have a safe
5 harbor that allowed the tribe to operate the Class-III
6 machines while the issue was being resolved.

7 After that compact went into effect, the three northern
8 tribes in Idaho went forward with Proposition 1, to create a
9 tribal gaming device that's video display and ticket out.
10 So for all intents and purposes, we figured that that's
11 close enough, and we agreed to stay our litigation while,
12 first, that initiative went through, and then while two
13 court challenges that were made to that were both ultimately
14 kicked out, but they were kicked out on jurisdictional or
15 standing grounds.

16 There's still -- then-Lieutenant Governor Risch, now
17 Governor Risch, and former Senator Nay (phonetic), and a
18 group of other folks, you know, adamantly maintained that
19 Proposition 1 violates the Idaho Constitution and that if
20 the court were to accept jurisdiction on that matter and
21 were to accept those arguments, then we'd be back to where
22 we are in our compact, under a safe harbor while we litigate
23 what the proper scope of gaming is in Idaho. That's
24 Challenge Number 1.

25 Challenge Number 2 is the State, you know, frankly

1 surprised us in that we had agreed to stay with the clear
2 understanding that if Proposition 1 challenges went down,
3 that there would just simply be a simple order of dismissal
4 of the lawsuit, acknowledging that the tribal gaming devices
5 are a permitted Class-III gaming.

6 But instead, they came back and said, "Well, even though
7 it's not in your compact, Proposition 1 has a provision that
8 freezes you to the number of machines you were operating on
9 December 31st, 2001. Proposition 1 has a provision that
10 requires that you spend five percent of your money on
11 education programs."

12 And we took the -- you know, "It's not in our compact."
13 So the State refused to dismiss the lawsuit. So we went in
14 front of Judge Winmill, and, to me, it's a very
15 straightforward case. Our compact governs Shoshone Bannock
16 activities, not Coeur d'Alene's compact, and our compact
17 doesn't have these provisions in it.

18 Judge Winmill ruled in our favor, but the State has
19 appealed that to the Ninth Circuit. We have a high level of
20 confidence that it would be affirmed, but be that as it may,
21 if we were to lose the Ninth Circuit, we would be looking at
22 an arbitrary limit on the number of Class-III devices that
23 we could offer. And if Senator Nay and Governor Risch were
24 to get the Idaho Supreme Court to hear the merits of the
25 challenge to Proposition 1 and we would lose, we'd be back

1 into the safe-harbor environment.

2 So this is another case in point to where the Class-II
3 issue doesn't have an immediate bearing. If your proposed
4 regulation went into effect, it probably would have no
5 immediate impact on our bottom line. But if either of those
6 contingencies come about, then suddenly, this issue is on
7 our front burner. And so it's important for us to cover
8 that base.

9 And that goes into the position to where, frankly, we
10 like the provision in our compact. We wish it was, kind of
11 like, in every compact, because it says, if we get into a
12 dispute with the State and the State asserts its
13 11th-Amendment immunity, then our compact is automatically
14 deemed amended to include whatever we requested in the
15 periphery of the lawsuit. So go ahead and assert 11th-
16 Amendment immunity. It means we win.

17 But that doesn't negate the fact that if either of those
18 two cases went against us, we'd be in a situation to where
19 we may have to look at Class II as part of the economic
20 survival of the tribe. And so it does go back into -- you
21 know, I don't want to be a broken record, but it does go
22 back into this issue of how does this Class-II argument fit
23 into the scheme of putting tribes in the position that
24 Congress intended for them to be when it passed the Act.

25 Although we have a very positive, constructive

1 relationship with the NIGC and the Department of Justice and
2 the U.S. Attorney's office now, it hasn't always been that
3 way. Shoshone Bannock operated for several years in the
4 absence of a Tribal/State compact. We had to go through --
5 you know, had another interesting issue where the federal
6 magistrate enjoined the United States from moving forward on
7 an enforcement action because he felt that there was a
8 substantial likelihood that we would prevail in our
9 bad-faith claim against the State, which would have been
10 stayed, because Seminole was at the Supreme Court, but when
11 Seminole came down the other way, everything began to
12 unravel. But it ultimately kept both parties at the table
13 till we worked out an agreement.

14 Again, without the viability of the Class-II gaming, the
15 tribes are threatened in terms of having to buy into states
16 who overreach on their compact negotiations. And the
17 question still out there is: We think you should look at
18 these Class-II definitions in the context of the federal
19 government's overall obligation to try to restore the
20 balance that Congress intended in the passage of IGRA, and
21 the proposed regulation doesn't do that.

22 The proposed regulation takes away the viability of
23 tribes to operate in the absence of the -- operate out of
24 harm's way in the absence of a Tribal/State compact. And we
25 think that you should be looking at this issue in that

1 context. To give the states more leverage is encouragement
2 for the states to continue to overreach, and the compacts
3 that are out there are evidence of the states overreaching.
4 And we think that you have the latitude in the statute
5 itself to provide for a viable Class-II bingo game; that as
6 long as it is an electronic aid to a game that maintains the
7 fundamental characteristics of the game of bingo, that you
8 should interpret that provision liberally and try to come
9 out with a regulation that goes to the limit that you're
10 able to go to and still provide tribes some modicum of
11 leverage in terms of negotiations with the state.

12 And we think that where there seems to be a disconnect,
13 in our reading of the rules and the case law and what this
14 proposal is, comes down to identifying what are the
15 fundamental characteristics of a game of bingo, and how do
16 your regulations preserve them? And if they go further than
17 that, why do they go further than that? Why is it necessary
18 to go further than that?

19 And with that, I think I'll turn it over to Judy. She
20 can get into part of the technical aspects that we'd like to
21 talk about.

22 MS. SHAPIRO: A lot of the concerns we have,
23 clearly, is: Granting that there have been some cases,
24 construing some of the prior cases on the Class-II gaming,
25 and also granting that those cases do not address those

1 games, some of the fundamental principles of those cases are
2 still there. And I believe the MegaMania case said that a
3 bingo game is not in the machine. We agree. A bingo game
4 is not in the machine. When the player plays bingo in some
5 of the current Class-II technological aids, they are not
6 playing against the machine. They are playing against other
7 players -- in some range of other players in the game.

8 And the ball draw is what it is. And the player has no
9 effect on the ball draw and no effect on the outcome except
10 insofar as having daubed their daubs. Those rules are in
11 place. Issues such as penalties for not daubing, sleeping,
12 catch-up abilities if you sleep -- all of those are house
13 rules. Those are the rules that are issued by the house,
14 partly as a marketing decision, partly as a game rule; but
15 not fundamental, if present or not, to whether or not it's a
16 bingo.

17 The house can decide whether to penalize someone for
18 sleeping. The house can decide whether to permit somebody
19 to catch up that went off to get a bottle of soda and came
20 back two calls later. The house can decide whether you've
21 slept the pattern or whether you have to reclaim the pattern
22 if nobody has a bingo. All of these things have customarily
23 been a traditional game of bingo under house rule. And we
24 frankly don't understand why those need to be centralized
25 regulations.

1 Similar issues to that: We are concerned that the timing
2 elements that have been introduced, of all the delays, don't
3 make the game any more bingo, just make it less profitable.
4 We are concerned -- and we know we've never agreed about the
5 issue about whether there have to be multiple daubs or a
6 single daub.

7 We are concerned about some of the sequence issues, that
8 we do not think that it is necessary to have multiple ball
9 releases in order for the game to be bingo so long as it is
10 a bingo ball draw, either mechanical, by hand, or by
11 electronically determined matches against a card, and the
12 player who is the first to cover wins.

13 That's what the cases say. And the details that have
14 been grafted on are not essential characteristics of bingo.
15 They might be interesting; they might make the game a
16 variant; but they don't change whether it is bingo or not.
17 And to make those be the sine qua non of whether a tribe can
18 play a game doesn't make sense to us.

19 Now, we understand that if the regulations go into effect
20 as they're proposed, we can challenge them. But that's many
21 years, and that's lot of money, and we'd rather not have to
22 do that. We'd rather be able to weave some understanding
23 that is a compromise between what we think it is and what
24 you think it is so the ambiguities are resolved in a way
25 that allows the market to move forward without paying so

1 many lawyers so much money.

2 MS. DIXEY: Oh, my gosh.

3 (Laughter.)

4 MS. SHAPIRO: I'm not the mainstream kind, you
5 know. I would rather see the tribes be able to put aside
6 the fight over what can and cannot be played and just play
7 the game and go ahead. That's part of it. I won't belabor
8 anything. We're going to put a lot of this in written form
9 with all the citations to support it. We are very concerned
10 about it.

11 MR. HOGEN: Are you troubled at all that if,
12 taking the approach you suggested, we come up with a game
13 that a player puts his money in, touches the button once,
14 and then that's all he or she has to do, and the game is
15 over, being considered, by the court, to be an electronic
16 facsimile of a game of chance?

17 MS. SHAPIRO: You mean whether the court decides
18 whether it is an electronic facsimile?

19 MR. HOGEN: Yeah.

20 MS. SHAPIRO: I'd be happy to have that question
21 before the court and to explain that the fundamental
22 distinction between that game and a slot machine is whether
23 the game logic is that of bingo.

24 MR. HOGEN: The slot machine is not what we're
25 talking about.

1 MS. SHAPIRO: I understand. A facsimile of a game
2 of chance. I don't think it's a facsimile. I think it is a
3 technological aid to the game of bingo. It allows more
4 players, at different locations or at different times, to
5 play together in a common game determined by the three bingo
6 criteria, and it just aids them to play it faster, very
7 fast.

8 MR. HOGEN: But the only thing they're doing to
9 play is putting their money in to start the game. Do you
10 view that as playing a game?

11 MS. SHAPIRO: It depends what they're doing.
12 They're not just putting the money in. Their pushing of the
13 button -- and if they understand, by the rules, they are
14 asking the game to daub the numbers when they are released,
15 and they understand that they're doing that, then, in fact,
16 they're playing a game of bingo. And I don't think that it
17 makes it a facsimile that they're not doing more. I don't
18 think it makes it a facsimile that they can do it faster.

19 And taking the middle position, something in between our
20 understanding and the proposed rule, I don't think it
21 becomes a facsimile if the player daubs two or three times
22 over 10 seconds versus once or twice in two seconds. I just
23 don't think that that is a defensible distinction.

24 MR. HOGEN: I appreciate your view.

25 MR. CROWELL: The X Game, here in Washington

1 State, is Class III. It has a two-touch requirement to it
2 that's mimicking a lottery pull-tab game, where you enroll
3 the game by pulling the pull tab on the first touch, and
4 you're displaying it, or ripping the tab open, with the
5 second touch. This still happens very quickly. But it's
6 essentially an electronic pull tab in terms of the way the
7 game is programmed.

8 When a player goes to one of these bingo machines, it's
9 still the game of bingo that that player is playing. He's
10 competing with other players that have drawn cards and
11 competing to see who is first to get the sequence that
12 matches the numbers that are drawn. Those are consistent
13 with the fundamental characteristics of the game.

14 I think where Judy may be and where -- if there's an
15 area, is daubing a requirement, a fundamental characteristic
16 of the game? And I think one of the things we're saying is
17 that even if it is, it's something that use of an electronic
18 aid should be viewed in a way where the tribe should be able
19 to offer that game in a Class-II format.

20 Even if the daubing requirement is there, we don't
21 understand why you're building in all these two-second
22 sequences that will have the real-world effect of sending
23 players away.

24 MR. HOGEN: Are there other concerns you'd like to
25 mention to us before you get into the off-the-record

1 discussions?

2 MR. CROWELL: I do want to talk about issues other
3 than Class II, but does Counsel have any anything to say?

4 MS. DIXEY: If it's okay, Mr. Chairman, I just
5 think this whole issue of prohibiting autodaub is -- will
6 really be a restriction on the tribe. And now, we use -- we
7 don't insert the money, but we actually use electronic aids
8 with bingo. But it actually is a bingo game that displays
9 an autodaub feature. And it's probably our most profitable
10 portion of our bingo operation.

11 And it's become more so. People enjoy it. Even those
12 old-fashioned players that we've had with us for many years
13 now will purchase, you know, one paper packet, but then
14 they'll also purchase the bingo -- the electronic bingo.

15 So it's been -- but it has been really an excellent
16 addition to our operation, and especially where we have a
17 real small area for bingo; and we can't afford to cover all
18 of our payout if we don't have some other mechanism for us
19 to make some additional money and to make it profitable.

20 But because we employ so many -- we're one of the few
21 gaming operations in the country that employs exclusively
22 tribal members or first-line descendents of the tribe. And
23 that was a directive from our membership.

24 So because of that, we have to look at every opportunity
25 to keep our members employed. And that really is our

1 biggest concern, is making sure that we can continue to
2 employ our tribal members, maximize our revenues in order to
3 keep them employed. Because we employ, on the average, 278
4 tribal members year-round, that is -- we are one of the
5 major employers in southeastern Idaho, and so it's very
6 important for us to make sure that we maximize our revenues
7 to retain employment, and then to provide revenues to tribal
8 government so that they can provide these services that we
9 so essentially need.

10 So by changing definitions, it doesn't change the fact
11 that we still have to provide employment. And our players
12 enjoy it. And we love to be -- because we are a
13 customer-service-based company, that's what we're always
14 concerned about, is how do our players feel about our bingo
15 operation?

16 And with us, bingo is very important. It's kind of a
17 sacred cow. And bingo, we started with. We've been able to
18 build it, become more sophisticated with our operation, be
19 more accountable with our inventories. So we really
20 appreciate our bingo-playing patrons and want to preserve
21 the bingo operation.

22 So any changes that you make in the definitions will
23 definitely impact how we operate. And I think the proposed
24 definitions will actually be a major restriction for us to
25 -- it will impact our revenues. It will impact the way that

1 we play the games, so we'll have to be more creative if it
2 does become effective. But I just think it will impact our
3 bottom line.

4 MR. HOGEN: If I understand what you're
5 describing, you have a paper game, and you can also use the
6 autodaub player station.

7 MS. DIXEY: Right.

8 MR. HOGEN: We've attempted to exempt that kind of
9 a scenario from these regulations. If you reach the point
10 where everybody's playing electronically, then you would
11 fall under this category. But if it's still a paper game,
12 you can do the autodaub. There may be some logical
13 inconsistencies there, but we thought it was a good place to
14 draw the line, because we know people are doing it and
15 they're enjoying it.

16 MS. DIXEY: But, Chairman Hogen, the concern that
17 we have is that -- you have heard the legal battles that we
18 face with the State, and if, for some reason, our compact is
19 changed or amended or Proposition 1 in Idaho is going to
20 apply to us, then we are going to have to fall back to
21 another position, and then that would be the use of the
22 electronic games, so then it will impact us tremendously.

23 MS. SHAPIRO: One of the big concerns that we have
24 is that if we do have to rely on electronic games. The way
25 that the rules are drafted, even leaving aside some of the

1 larger issues -- issues of card size and presentation and
2 ball draw and all of those things -- greatly restrict the
3 ability of the game designers to use their creativity in the
4 future. What the technology is today is going to be stale
5 one year, two years, three years from now. And these regs
6 don't have the ability to permit unforeseen uses into the
7 future. And the tribes need to be able to change. Things
8 are changing on the floor everywhere, in all forms of
9 gambling, and the tribes need to be able to do that to stay
10 competitive.

11 MR. CROWELL: The tribe sent a report that
12 expressly identifies that the tribe should have that maximum
13 flexibility to use the technology as it develops. I'm sure
14 they didn't envision the games that are being offered now.
15 But they knew that they couldn't envision where technology
16 would take the game. That's why I think your analysis and
17 what should come out should frame those fundamental
18 characteristics of the game.

19 And it's interesting that you point out that -- when I
20 hear you say, "Well, we want to exempt out the autodaub
21 games if it's in connection with the paper game," part of me
22 says, "Well, that's terrific, because we want to at least
23 preserve the ability to use that autodaub."

24 But then you have to draw the question as to: "Well,
25 then, how are you identifying manual daub as a fundamental

1 characteristic of the game?" It really does appear to be an
2 inconsistent position. And you're going back to your
3 1988 -- when we first started the discussions with Tony
4 Hopewell in terms of trying to identify what are these
5 Class-II games.

6 You know, the focus should have been, and now seems to be
7 -- what I do like about the development over time is it now
8 seems to be coming back to trying to identify: Well, what
9 are the fundamental characteristics of the game, and does
10 the game maintain that?

11 But that brings into discussion, you know, does autodaub
12 violate the fundamental characteristics of the game. We
13 think the answer is no. It's just an aid that the player is
14 using to make sure that the numbers that have been drawn are
15 marked on the card.

16 MR. HOGEN: Well, I agree, and our regulations
17 contemplate autodaub. We just don't contemplate auto
18 everything. You don't have to find "3" under "B." You can
19 say, "If I've got it on my card, daub it for me." But you
20 can't just do everything else, daub the next time after the
21 next call will win, just the one time.

22 Some of us have to be checked out of our rooms
23 momentarily, or we're going to be stuck for another day. So
24 if it's okay, if we could shift gears to these other
25 subjects, if we can do that now. We'll bring this

1 consultation to a close.

2
3 (The consultation with the Shoshone Bannock
4 Tribes concluded at 12:06 p.m.)
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A P P E A R A N C E S

For the Port Gamble S'Klallam Tribal Gaming Agency:
7989 Salish Lane Northeast
Kingston, Washington 98346

Linda Helm, Gaming Commission Director
Leo Cullod, General Manager
Mario Brown, Tribal Licensing Specialist
Robin Pratt, Casino CFO

(The consultation with the Port Gamble
S'Klallam Tribal Gaming Agency began at 1:06
p.m.)

1 MR. HOGEN: Good afternoon. I'm Phil Hogen,
2 chairman of the National Indian Gaming Commission, and Chuck
3 Choney is the associate commissioner, and today we're the
4 full Commission. We are here in Tacoma, on the 25th of July
5 2006, pursuant to proposals that the National Indian Gaming
6 Commission published in the Federal Register regarding
7 changes to definitions and regulations the Commission might
8 adopt that relate to classification of games and equipment
9 that can be used for Class-II gaming, which, of course, can
10 be done by tribe/state compact, as distinguished from
11 Class-III gaming, which would require a compact.

12 Also present here is our acting general counsel, Penny
13 Coleman; and we may have other members of our staff and
14 assistants come and join us as we proceed.

15 So having said that, if you could please introduce
16 yourselves again, here on the record, so that the reporter
17 will know who is who. And please tell us how you're
18 affiliated with the tribe and the tribe's gaming operation.
19 Then we'd be very interested in hearing your comments or
20 thoughts you have on our proposals.

21 MR. CULLOD: I'll start. My name is Leo Cullod,
22 the general manger of The Point Casino, which is owned and
23 operated by the Port Gamble S'Klallam Tribe of Kingston,
24 Washington.

25 MS. HELM: I'm Linda Helm. I'm the director of

1 tribal gaming for the Port Gamble S'Klallam Tribe.

2 MR. BROWN: My name is Mario Brown. I work as a
3 licensing technician for the tribal gaming agency for the
4 Port Gamble S'Klallam Tribe.

5 MS. PRATT: My name is Robin Pratt. I'm CFO of
6 The Point Casino.

7 MR. HOGEN: And Rayanne Morris, our staff member
8 who works out of our Bellingham satellite office -- she's
9 with us today.

10 MS. HELM: I'd like to thank you for having us
11 before you today and listening to the comments that we
12 prepared for this meeting. The first thing I wanted to talk
13 about is the consultation process itself.

14 "The Port Gamble tribe would like to make note that the
15 consultation with the tribes is not what we consider to be
16 adequate. A true consultation would mean that the opinions
17 of the tribes are valued. This means that we're given
18 adequate time to prepare comments, especially in light of
19 the fact that the technical standards have not yet been
20 published. These consultations need to be held at
21 geographic locations with affected tribes.

22 "Given the details of the proposed changes, the
23 invitations for consultations must be sent earlier, with the
24 procedure for confirmation clearly described. Adequate time
25 must be allowed so that the technical standards and

1 classification standards can be viewed together. This would
2 allow tribes to understand the full context of the entire
3 package of regulations presented. And thought must be given
4 to smaller tribes who may not have sufficient staffing to
5 generate argument quickly. Above all, the NIGC must not
6 allow the comment period on the classification standards to
7 expire until after publication of the technical standards
8 and sufficient review period.

9 "We at Port Gamble feel that no full consultation or
10 comment period is complete without a public hearing. A
11 hearing is needed to fully address all of the very complex
12 issues. We feel that these issues are in-depth and complex
13 since there have been many attempts at 'clarifying' these
14 definitions, as well as several cases in litigation.

15 "Once a public hearing has been scheduled, we require
16 proper time to prepare our comments. 'Proper time' means
17 time to review the entire regulatory package: Technical
18 classification and definitions.

19 "All of the comments from all the tribes, manufacturers,
20 and tribal representatives must be made part of the public
21 record and disseminated to all tribes operating casinos.

22 "Until a meaningful and collaborative consultation
23 process is developed, meetings held by the NIGC are merely
24 comment meetings."

25 Now, I'd like to make a few notes on game classification.

1 "IGRA defines Class-II games with the following
2 sentences: 'The term 'Class-II gaming' means the game of
3 chance commonly known as 'bingo,' whether or not electronic,
4 computer, or other technologic aids are used in connection
5 therewith, which is played for prizes, including monetary
6 prizes, with cards bearing numbers or other designations, in
7 which the holder of the card covers such numbers or
8 designations when objects similarly numbered or designated
9 are drawn or electronically determined and in which the game
10 is won by the first person covering a previously designated
11 arrangement of numbers or designations on such card,
12 including, if played in the same location, pull tabs, lotto,
13 punch boards, tip jars, instant bingo, and other games
14 similar to bingo.'

15 "We at Port Gamble feel it's important to understand
16 IGRA, both for what it says and what it does not say. In
17 the definition of 'Class II,' IGRA states that 'the holder
18 covers cards when objects with numbers or symbols are 'drawn
19 or electronically determined.' There's no mention that the
20 numbers must occur in sequence, nor is there any ban on
21 'autodaubing.' We also note there is no time limit set for
22 allowing players to daub their cards.

23 "To us, it is quite clear that the Senate intended IGRA
24 to allow for technological advancement in the game of bingo.
25 In fact, a Senate report that accompanied the bill that

1 became IGRA indicated that 'tribes should be given'" -- this
2 is a quote -- 'tribes should be given the opportunity to
3 take advantage of modern methods of conducting Class-II
4 games, and the language regarding technology is designed to
5 provide maximum flexibility.'

6 "So we do not share the confusion that the NIGC has over
7 what constitutes a Class-II bingo game. The Port Gamble
8 S'Klallam agree with the plain-language understanding that,
9 if the underlying game is bingo, then the whole game is
10 Class II. Simply put, no matter what the outside looks
11 like, if the game is bingo, then the machine is Class II.

12 "The difference between a technological aid which is
13 designed to aid the play and an electromechanical facsimile
14 must be determined. However, this distinction is not so
15 difficult to establish. Electronic, computer, or other
16 technologic aids include, but are not limited to, machines
17 or devices that, one, broaden the participation levels on a
18 common game; two, facilitate communication between and among
19 gaming sites; or, three, allow the player to play a game
20 with or against other players rather than with or against a
21 machine.

22 "With that understanding, we must look at the term
23 'facsimile.' A facsimile is, by definition, a copy of
24 something else, or a replica. In terms relevant to Class-II
25 gaming, a facsimile must be a replica of bingo, or games

1 similar to bingo, and not bingo itself. Therefore, in order
2 for a bingo game to be a facsimile, it must look like bingo
3 but not actually be bingo. This means that any game that is
4 bingo is therefore not a facsimile.

5 "Going by the established definition in IGRA, so long as
6 there are prizes that players compete for and there is a
7 card with numbers or symbols, and so long as the holder of
8 the card covers such numbers or designations when similar
9 numbers or designations are drawn or electronically
10 determined, and the game is won by the first person to cover
11 the symbols in a previously designated arrangement, then the
12 game itself is bingo. And if the game is bingo, then it
13 cannot be a facsimile of bingo.

14 "Again, if there are players with cards and there are
15 actual numbers or symbols being drawn and those players must
16 mark their cards, manually or automatically, and they
17 compete with each other to win prizes, then that game is
18 bingo, no matter how it is presented. No other standard is
19 needed.

20 "How the machine looks on the outside, the size of the
21 letters that indicate that the machine is bingo or the size
22 of the bingo card, or even how long it takes the numbers to
23 come out before being daubed, is irrelevant.

24 "Mr. Hogan himself wrote a letter to the Oklahoma tribes
25 that stated, quote, 'The theme of the game and the name and

1 graphics that go with that theme are not the determining
2 factors in whether a particular game can be played. The
3 graphics and the theme are merely cosmetic features, and the
4 list of possible names would be endless.' Therefore, it
5 doesn't matter how the games look. If it is bingo, it is
6 Class II.

7 "This understanding has been upheld in at least five
8 Circuit Court of Appeals decisions: 'United States v. 103
9 Electronic Gaming Devices,' 'United States v. 162 MegaMania
10 Gambling Devices,' 'Diamond Game Enterprises v. Reno,'
11 'United States v. Santee Sioux Tribe of Nebraska,' 'Seneca-
12 Cayuga Tribe of Oklahoma v. The NIGC.'

13 "All of these court decisions rejected the NIGC's
14 definitions. The courts decided that the games in question
15 were indeed Class II. In 'The United States v. 103
16 Electronic Gambling Devices,' the court wrote, 'All told,
17 the definition of bingo is broader than the government would
18 have us read it. We decline the invitation to impose
19 restriction on its meaning besides those Congress explicitly
20 set forth in the statute. Class-II bingo is not limited to
21 the game we played as children,' unquote.

22 "Disagreeing with the court decisions of 'The United
23 States v. Santee Sioux' and 'Seneca-Cayuga Tribe v. The
24 NIGC,' the Department of Justice filed a petition for writ
25 of cert with the Supreme Court for each case. The Supreme

1 Court has denied both petitions.

2 "Port Gamble feels the courts were correct in their
3 reading of IGRA and do not see the need for NIGC to continue
4 to reclassify games that it already has approved."

5 I'd like to talk now about the economic impact to our
6 tribe and to other tribes. The NIGC's mission statement
7 says, quote, "The Commission's primary mission is to
8 regulate the gaming activities on Indian lands for the
9 purpose of shielding Indian tribes from organized crime and
10 other corrupting influences, to ensure that Indian tribes
11 are the primary beneficiary of gaming revenue, and to assure
12 that gaming is conducted fairly and honestly by both
13 operators and players," unquote.

14 "The most strongly held value for Port Gamble is the
15 notion of self-determination. If the changes proposed by
16 the NIGC go through, then many tribes will be unduly injured
17 economically. At the very least, the opportunity to grow
18 and negotiate with the State Gambling Commission will be
19 hindered here in Washington, but tribes that rely solely on
20 Class-II gaming may even face bankruptcy.

21 "Mr. Hogen knows of the importance of Indian gaming to
22 the tribes across the country. In an address to the Senate
23 Committee on Indian Affairs, given September 21st, 2005,
24 Mr. Hogen said, quote, 'In the years since the Indian Gaming
25 Regulatory Act, IGRA, was passed, Indian gaming has grown

1 exponentially, from \$100 million in revenue to over 19.4
2 billion in 2004. Approximately 80 percent of this revenue
3 comes from the higher-stakes, Class-III gaming. Revenues
4 from Indian gaming have built roads, schools, and health
5 centers on reservations across the country and greatly
6 reduced reservation unemployment in many areas,' unquote.

7 "The NIGC Web site states that, for the year 2005, tribes
8 earned over \$22.6 billion in revenue. Using the figure of
9 20 percent that Mr. Hogen attributes to Class-II gaming,
10 that still leaves more than \$4.4 billion in revenue that
11 must be taken into account. And more than just directly
12 affecting the tribe and its ability to function, there's the
13 economic circle of each person employed, both directly and
14 indirectly, by the gaming of that tribe. This circle must
15 take into account the life of each employee as they purchase
16 goods and services in their communities.

17 "And moving further out in our economic circle, we must
18 take into account the businesses that have grown due to the
19 tribal casinos, including by not limited to the lending
20 institutions that the tribes still owe. Should a tribe
21 suddenly have all of its machines determined to be illegal
22 and it cannot function, who will pay the loans the tribe
23 still owes? Furthermore, if the NIGC can determine a game
24 to be illegal at any time in the future, what manufacturer
25 will want to invest in such an unstable market? To

1 conclude, a true study of the economic impact must be
2 conducted and published before any proposals can be
3 finalized.

4 "We do thank you for the time you have allowed for us to
5 voice our concerns. We also hope that this discussion will
6 be ongoing until the concerns of the tribes can be properly
7 addressed. Thank you."

8 MR. HOGEN: Thank you for your thoughtful
9 statement. Could we get a copy of your written statement as
10 well, because that will assist the court reporter?

11 MS. HELM: Is there a place where I could make a
12 copy? This is kind of a rough draft. This is marked up,
13 but I'd be glad to make a copy for you.

14 MR. HOGEN: When we conclude, we'll see about
15 that. You've suggested that a public hearing be held, and
16 we are very seriously considering doing that. We expect the
17 technical regulation, or proposed regulation, to be
18 published next week; and it may be, that, as we specify a
19 comment period in connection with that, we'll try to
20 coordinate that with the comment period for these
21 regulations and perhaps extend that.

22 We are making our level-best effort to consult with
23 tribes with regard to this very serious issue, and we're
24 glad that you took advantage of our invitation to come here,
25 and quite a number of other tribes.

1 We are going to Southern California tomorrow, and we're
2 going to Oklahoma next week. And this, of course, is not
3 the start of this exercise, but, hopefully, approaching the
4 end of it. We've been working with the Tribal Advisory
5 Committee for a couple of years now. We've published five
6 drafts--each one changed a little bit--of these proposed
7 classification regulations, and two drafts of proposed
8 technical regulations, on our Web site.

9 We thought about going forward, simultaneously, with the
10 technical regs, but given the rapid pace of technologic
11 changes, we thought that we needed to update the technical
12 standards. And we think we've done that now, and those
13 should be published soon; but they won't look dramatically
14 different than what we've had on the drawing board before.

15 We understand that tribes need to rely on gaming for
16 economic development and that Class II is a viable part of
17 that, not only directly, as an opportunity to generate
18 revenue, but as a fall-back position and a position to have,
19 take, and defend as they negotiate their Class-III
20 arrangements with the states.

21 A challenge to Class II, for years, has been: Exactly
22 what can you and what can't you do? There are instances
23 where NIGC advised tribes that were conducting Class-III
24 gaming, in the absence of a compact, that were attempting to
25 defend it as Class II. And, as a result, those facilities

1 were closed. All of the gaming revenue was lost. In the
2 case of the Seminole of Oklahoma, a \$9 million fine was
3 imposed.

4 That's certainly not the way we would like to enforce
5 distinctions between Class-II and Class-III gaming, and, as
6 a result, we think that there needs to be clarity, and a set
7 of regulations would be useful to do that.

8 As we try to get to the right place with those
9 regulations, we'll take into consideration what your tribe
10 has offered, as well as the other tribes. And hopefully, at
11 the end of the day, we'll have a workable product.

12 Now, we won't be surprised if, as soon as we finalize
13 those, somebody brings a lawsuit and challenges whether we
14 did the right thing or had the authority to do what we did.
15 And that's not a bad thing. That's probably a good thing.
16 It will bring clarity to this. Clarity is what we're
17 striving for and what we need.

18 So thank you for your statement, and we'd be happy to
19 hear any other, additional, comments you might have before
20 we conclude.

21 MR. CULLOD: Mr. Chairman, Commissioner, and
22 Staff, I want to speak on behalf of how it personally
23 affects our little operation. Now, I'm not speaking on
24 behalf of the council. I don't have authority. But I do
25 make recommendations to them, as far as gaming operations,

1 so I want to make that clear.

2 Our little operation started back in 1992 with 150
3 Class-III machines. We had a bingo operation that was
4 unsuccessful; they lost money, they closed it; straight
5 bingo, paper bingo.

6 Since that time, the history of the casino is: The first
7 two years we were in business, we lost money; combination of
8 different things, because of financing requirements and
9 different observations. But where the casinos made their
10 money was to continually expand the operation and gradually
11 add more machines.

12 So right now, we're up to 525 machines, as of the end of
13 next week. By the end of the year, we hope to get up to 575
14 machines. And like I said, every time we add machines, it
15 actually increases our revenue, we employ more people; it
16 benefits the tribe.

17 The future for the Port Gamble S'Klallam tribe and casino
18 operations right now is a feasibility study, done over a
19 year ago, that recommends that we build a larger facility,
20 with 750 machines, minimum. Well, as you probably know, in
21 the State of Washington, as a compacted tribe, we can only
22 have 675 Class-III machines, or we have to go to another
23 tribe and try to lease some of their allotment.

24 Being as there's only 19,000-plus Class-III licenses
25 obtainable in the whole state, and with the Snoqualmie and

1 Cowlitz both coming on board soon, those become a very
2 precious commodity, those licenses. So therefore, if we
3 were to expand, like it's recommended on all the feasibility
4 studies and market studies, we're in a position where we can
5 never get to 750 machines, unless we have the opportunity to
6 do a mix of Class-II machines--which was our intention all
7 along--and someday, hopefully, go way beyond the 750.

8 The reason I don't support these changes in the casino
9 and the Class-II classification regulations is: Again, it
10 limits what I can put in my casino, based on Class II, Class
11 III. I think it will have an extremely negative impact on
12 the casino.

13 If our machines were averaging \$100 a day per win, at
14 only 75 machines, Class-II machines would net us an
15 additional \$2.7 million. That's a lot of money that we risk
16 not having if the classification is changed.

17 And the reason I say that: If you were to talk to any
18 customer that plays a machine, they don't care whether it's
19 bingo. They don't care whether it's pull tab. They don't
20 care what machine it is. It's there for entertainment
21 value.

22 I think these changes -- no autodaub, too long to play
23 the game, the time span between each game, the digital
24 display of half the screen being bingo -- I think that what
25 that will do is drive the Class-II market out of business

1 completely. I don't think there's a customer that would sit
2 here and look this Commission in the eye and say, "Oh, I
3 love those changes. Now I know I'm playing bingo, and I
4 like these changes."

5 Most slot players -- Class II, Class III, it's all
6 perception. It's all graphics. It's all fun. It's
7 entertainment. It's not about them winning money. It's
8 about them being entertained. These changes would certainly
9 not enhance the ability for a customer to be entertained. I
10 think it would slow it down.

11 And, in fact, if our tribe was to go out and spend the
12 money to build -- 20, 25 million, to build a new casino and
13 we had to rely on at least 75 Class-II machines,
14 economically, that may not make sense, if the Commission
15 decides to change these classification standards. In fact,
16 it could hurt us, where we wouldn't be able to make our
17 payments, because that's a lot of lost revenue.

18 The other thing that happens, too, by doing this, is the
19 limitations of title, themes that we can select from. In
20 Washington State, we're really unique, and we only have
21 three manufacturers we can get machines from: Multimedia,
22 Bally, and IGT. I can't go to Aristocrat. I can't go to
23 Williams, Kinami (phonetic). I can't buy games from them,
24 so I'm limited to those three.

25 Well, the fewer people in the field, the more limitations

1 there are on my business, to be able to give customers what
2 they want. Often, we have people come from Vegas: "Well,
3 how come you don't offer this title?" "It's because we
4 can't have it in our state." But we could have it, maybe,
5 on Class II.

6 So if we limit that, then we're still stuck dealing with
7 three companies. We have no flexibility in getting new
8 titles out, new technology; opportunities for our customers
9 that they truly want.

10 And finally, the big thing about Class II that we don't
11 get in Class III, the big thing that draws a lot of those
12 machines, is the linked progressives. In Washington State,
13 we cannot have those on Class III.

14 Right now, Rocket's got a game out that their
15 progressive's over a million. It drives it. I mean, people
16 want those type of jackpots they can't get -- you know, they
17 can get in Vegas, they can get in Atlantic City, which they
18 currently can't get -- or they can get now in a Class-II
19 venue in Washington State.

20 But it's a marketing tool. It's something to drive
21 people into the casino. By expanding growth and revenue, we
22 expand our employment base, which benefits the tribe by
23 hiring the tribal employees. And it benefits all these
24 other tribal programs.

25 So we feel, from a financial point of view, that,

1 economically, by limiting what type of Class-II machines we
2 could put in there, by changing these features, we will not
3 have the opportunity to put those machines in and continue
4 forward with the economic growth for our tribe. Thank you.

5 MR. HOGEN: Thank you. We appreciate your
6 comments. One point I'd like to make is: We're not
7 changing the regulations with respect to Class II. We're
8 making them. That is, I think there's been a need to have
9 regulations, and since we haven't, that's led to the
10 confusion.

11 And if I were a tribe and I were about to do an expansion
12 to accommodate 750 machines or whatever, one of the things I
13 would like would be some certainty that, when I invested
14 in--or purchased, leased, or whatever--my equipment, I was
15 on solid ground. And we think that, if and when we can come
16 to clarity--and, hopefully, clarity then will permit the
17 tribes to use fast, fun, profitable, attractive Class-II
18 devices--that that will be useful.

19 We're going to continue to study whether we've got the
20 right amount of times or intervals to permit player
21 participation and so forth. We do permit autodaub. We just
22 don't permit auto everything.

23 That is, you don't have to find "7" under "B." Rather,
24 you can say to your machine, "If I've got her, daub her."
25 But then you have to also do it again, and you run the risk

1 of sleeping the bingo, just like if you were playing the
2 game, if you don't cover when the number is called, as
3 mentioned here, in the recitation of what IGRA says about
4 bingo.

5 So we have a tough challenge before us, and the
6 discussions we have with the tribes are going to be useful,
7 and we will, after probably holding a public hearing, take
8 all of this under advisement and try to come up with the
9 right thing.

10 MS. COLEMAN: Could I clarify one thing? So you
11 don't have any Class-II games right now?

12 MR. CULLOD: The tribe did have some, in a
13 separate facility, that didn't make it economically. We
14 feel it's because we didn't have the appropriate facilities.
15 We are actually negotiating with some Class-II companies, to
16 bring some machines into our casino?

17 MS. COLEMAN: Okay.

18 MR. HOGEN: Well, I know we were a little tardy
19 getting started, but we've about used up our time. Any
20 further comments that you'd like to make?

21 MR. BROWN: In strictly a regulatory sense, our
22 job is to protect the tribe and tribal assets, and there's
23 two things I couldn't wrap my mind around. One is the need
24 for -- and I understand that you are trying to attempt to
25 write regulation through your rulemaking abilities. I

1 somewhat disagree with that process, but I understand why
2 you're doing it.

3 Because the first question I asked myself -- and
4 actually, Leo was my first boss, that taught me that you
5 have to ask yourself: What are you protecting? What is
6 being violated here?

7 And I'm not -- you don't have to answer it, sir. I'm
8 hoping that, in time, you'll think about it. What's going
9 on, that's so horrible, that we need all of these new rules?
10 What is the purpose of the two-inch letters going across?

11 There's nothing in IGRA that says that the customer has
12 to know they're playing bingo. Those things are regulatory
13 things that we know. That ought to be good enough for the
14 NIGC.

15 So that's the first thing. What are you actually
16 protecting? How does this tie in with your mission
17 statement?

18 But the other thing, economically, is: You say, in the
19 absence of -- you have it set up, as I read it, that you
20 basically pick a laboratory. The laboratory has to confirm
21 that it's indeed Class II, and that, if you don't like it,
22 you can actually change laboratories. The tribe doesn't get
23 to chose one. No one else has an option. And then, if we
24 want to appeal, we have to appeal to you. We have no other
25 options, except litigation.

1 But in how you have this written, your statement is --
2 say a game is submitted, basically. The Point Casino
3 submits a game through the lab that you approved, and they
4 say it's Class II. It says: "In the absence of an
5 objection within 60 days, the parties may assume the
6 chairman does not interpose an objection, but the chairman
7 may object to the testing laboratory certification
8 subsequent to the 60-day period upon good cause shown."

9 So basically, the only thing that we have is, if we go
10 past 60 days, you might order 500 machines, thinking that
11 they're good. And then, two years later, you come back and
12 say, "Oh, they're not that good, and here's why." What
13 happens? We're basically stuck. So in the language, if
14 you're going to leave this, this is somewhat of an
15 imposition, the way it's designed now.

16 We would like an actual certification of games, not some
17 kind of vague, "Well, we didn't object yet. Therefore, go
18 ahead and order your games." And that's why, in putting
19 this together, we said, "What manufacturer is going to want
20 to go through all the trouble of changing their Class-II
21 games and making them, sending them out, and then NIGC comes
22 back 18 months later and says 'they're not good enough; take
23 them away'?" Or go to jail, because now we have the DOJ
24 involved.

25 It's very, very hard for businesses to want to be

1 bothered with something that's that unstable. So that
2 leaves the tribe the option of going to other businesses, or
3 other avenues of obtaining loans, which may be less than
4 reputable.

5 For example, if Bank of America won't loan us money
6 because we can't guarantee our machines are legal, because
7 we don't have anything from the NIGC saying that they're
8 legal -- we only not have something from the NIGC, saying
9 they don't object yet -- then where are we going to get the
10 loan?

11 And if we get the loans from loan sharks or other less-
12 than-reputable sources, then NIGC has done exactly the
13 opposite of what it claims to do, which is protect us from
14 that.

15 So those are the main problems that we have. And that's
16 why the public hearing is important. I want us to be able
17 to get to the root of: What are we protecting, and why are
18 we going through all this trouble? So that's my main
19 comment for right now.

20 MR. HOGEN: Well, we appreciate that. And I
21 understand the uncertainty. And the reason we put that in
22 there is: We've seen other models where everybody thought
23 they had it right. Microsoft and Bill Gates, for example,
24 put out Windows, and then, down the road, they figured,
25 "Oops, there's a bug, there's a glitch. We've got to fix

1 it"; and to just say, "Well, that's chiseled in stone; too
2 bad; sorry," it would not, I don't think, be realistic.

3 I would expect it will be very rare that NIGC would ever
4 come in, 60 days or two years later, and say, "That's a
5 problem." But if that occurred, the first thing we would do
6 is sit down with the manufacturer and say, "Is there a way
7 we can fix what now is apparent to us but wasn't then?" and
8 work to try and, as painlessly as possible, do that.

9 I certainly don't want to drive tribes into the hands of
10 loan sharks and things like that. But having witnessed this
11 phenomenal growth, referred to here in the testimony that I
12 presented to the Senate Indian Affairs Committee, I think
13 Indian gaming has developed the reputation and gained the
14 trust of reputable financial institutions. So I think the
15 regulatory framework that we're trying to come up with will
16 better accommodate that, rather than hinder it. But we'll
17 take that concern under advisement, and maybe there's a
18 better way to address the review situation.

19 I think we have another tribe knocking on our door, so
20 we'll say thank you, and perhaps we can get a copy of that.

21
22 (The consultation with the Port Gamble
23 S'Klallam Tribal Gaming Agency concluded at
24 1:40 p.m.)
25

A P P E A R A N C E S

For the Nez Perce Tribe:
P.O. Box 305
Lapwai, Idaho 83540

Samuel N. Penney, Tribal Council Vice-chairman
Darren L. Williams, Staff Attorney/Policy Analyst
Melvin Wheeler, Gaming Commission President

(The consultation with the Nez Perce Tribe
began at 1:40 p.m.)

1 MR. HOGEN: Good afternoon. Welcome to this
2 government-to-government consultation session. The National
3 Indian Gaming Commission is here in Tacoma, on July 25th,
4 2006, pursuant to proposals we published in the Federal
5 Register, on the 25th of May, relating to definitions and
6 proposed regulations that relate to distinguishing equipment
7 that tribes can use to do Class-II gaming, that they don't
8 need a tribal/state compact for, as opposed to those
9 electronic facsimiles of a game of chance, like slot
10 machines, that require Class-III compacts.

11 Here on behalf of the Commission are myself, Phil Hogen,
12 chairman; Chuck Choney is the associate member of the
13 Commission, and, today, the two of us constitute the
14 Commission.

15 We have John Hay, who is from our Office of General
16 Counsel. Randy Sitton is our regional director from the
17 Portland office, and Rayanne Morris is in the Portland
18 region, but up in Bellingham. And Penny Coleman is the
19 acting general counsel, and Alan Phillips is from our
20 Sacramento office, assisting us with this process.

21 So if, for the purposes of the record, you'd introduce
22 yourselves and tell us how you're affiliated with the tribe
23 or the gaming operation, we'd very much like to hear your
24 views with respect to these proposals.

25 MR. PENNEY: Good afternoon. My name is Sam

1 Penney. I'm the vice-chairman of the Nez Perce tribal
2 executive committee. I've been on the council -- I'm in my
3 18th year. I served, for 10 years, as the chairman of the
4 Nez Perce tribe.

5 With me today, I have Mr. Melvin Wheeler, who is the
6 chairman of our gaming commission, and Mr. Darren Williams,
7 who is from our office of legal counsel.

8 And before I begin, you know, we submitted letters, on
9 July 10th, to the Commission, and I read the Federal
10 Registers with interest on the intent of the Commission. I
11 read comments from the tribes.

12 But, you know, I always carry this book with me, all the
13 time, "Chief Joseph's Story," because what it reminds me of
14 is the history of the federal Indian policy and how it
15 relates to tribes. And I just wanted to share with you
16 briefly -- and this is, in no way, intended to be a
17 reflection on anyone. It's just something to think about:
18 Why we're here today.

19 But one of the chiefs during that time, during the Nez
20 Perce war, was speaking, and he was talking about his true
21 feelings, and he said something to General Howard. He
22 said -- he says, "I don't care. I've expressed my heart to
23 you. I have nothing to take back. I have spoken for my
24 country. You can arrest me, but you cannot charge me or
25 make me take back what I have said."

1 And then Chief Joseph, at another time, was talking about
2 his friends, and he was in Washington, D.C. in 1897, and he
3 said something that always sticks with me, and I'm just,
4 again, saying this today in a good spirit and why we're here
5 today, and hopefully why you're here today.

6 And he said, "My friends, I've been asked to show you my
7 heart, and I'm glad to have this chance to do so. I want
8 the white people to understand my people. Some of you think
9 of the Indian as a wild animal. This is a great mistake. I
10 will tell you all about our people, and then you can judge
11 whether Indians are men or not.

12 "I believe much trouble and blood would be saved if we
13 both opened our hearts more. I will tell you, in my way,
14 how the Indian sees things. The white man has more words to
15 tell you how they look to him, but it does not require many
16 words to speak the truth.

17 "What I have to say will come from my heart, and I will
18 speak with straight tongue, because the Great Spirit is
19 looking at me and will hear me. Our fathers gave us many
20 laws. These laws were good. They told us to treat all men
21 as they treated us and that we should never be the first to
22 break a bargain, that it is a disgrace to tell a lie, that
23 we should speak only the truth.

24 "We were taught to believe that the Great Spirit sees and
25 hears everything and that he never forgets; that, hereafter,

1 he will give every man a spirit home according to his
2 dessert. If he has been a good man, he will have a good
3 home. If he has been a bad man, he will have a bad home.
4 This, I believe; and all my people believe the same."

5 And the reason I shared that with you today is: You
6 know, I read the comments and the expressions that the
7 Commission believes that is in the best interests of the
8 tribes. And I've also advocated for the Nez Perce Tribe for
9 what our beliefs are regarding the proposed Class-II gaming
10 regulations. And I'm not going to go over them word for
11 word. I think the letter is pretty self-explanatory.

12 I know there was a task force put together, and many
13 tribes felt that, even though there were tribal members on
14 this task force, that it wasn't a full, meaningful
15 consultation. In fact, many tribes have stated that they're
16 uncertain if the committee had input in the actual drafting
17 of the regulations and how the Federal Register, or any
18 other documents, reflect the views of the tribes.

19 For the Nez Perce tribe, I might go back just a step. In
20 the State of Idaho, in November 2002, I believe, we did a
21 proposition which was called Proposition 1. And during that
22 time, they told us -- first or all, they told us that we'd
23 never get enough signatures. Then they told us it would
24 never pass.

25 But it did pass. And we felt, at that time--I was

1 chairman at the time--that we were protecting the interests
2 of the Nez Perce tribe by passing that Prop 1. And it did a
3 number of things, as far as using 5 percent for revenue
4 sharing, those type of things.

5 What I'm getting at is: You're all aware of the intent
6 of IGRA and the use of revenue. And for the Nez Perce
7 tribe, you know, we utilize our funds to supplement many of
8 our tribal programs, and without that supplementation of
9 those funds, many of our programs would not operate.

10 And that's why I shared this story with you. To me, in
11 talking to some of the elder statesman we have in our
12 tribe -- when I first got on our council in 1989, they would
13 often remind us, at the time, that a lot of the things that
14 we're dealing with today is because of federal Indian
15 policy. And I share that story.

16 In my personal view, it reflects the success of Indian
17 gaming that the Nez Perce tribe truly believes that, through
18 the regulation process, a lot of these things can be taken
19 care of. That's what you're trying to do. Phil, I've known
20 you for a number of years, and I know your heart is in the
21 right place.

22 And working, reading the documents--by attorney generals
23 and states and others--on the expansion of gaming, one of
24 the things that Prop 1 did for the Nez Perce tribe is that
25 we agreed that we would not game off the reservation. And I

1 think the impacts to the tribes, nationwide, as far as
2 limitation of Class II, will be devastating to many tribes.
3 And from my review -- this is my own personal view of IGRA
4 and some of the legislative history; you know, the purpose
5 and the intent -- I think a lot of those things are being
6 fulfilled at this time. And I would just hate to see that--
7 you know, any of the economic advancement or those type of
8 things--be hindered by any type of burdensome regulation.

9 So in just, kind of, summary, I think the Nez Perce tribe
10 has expressed our concerns with the proposed regulations,
11 and I just wanted to reiterate that we did send the July
12 10th letter and that it is the official view of the Nez
13 Perce tribe. And before the deadline, we'll submit
14 additional comments as well.

15 At this point, I'd offer Darren or Melvin, if they would
16 like to make any comments. Melvin is the gaming
17 commissioner, and if you want to make any comments at this
18 time.

19 This may affect our operations. We currently do not
20 conduct a lot of Class-II gaming. But, in the future, if we
21 were able to -- you know, we want to have that opportunity
22 to do that without having any limitation. Because, in Prop
23 1, it limits the number of machines we could have over a
24 period of years, and that's why the Class-II definitions are
25 important to us.

1 MR. WHEELER. Yes. Thank you. I know that the
2 Class II -- it would limit tribes, such as the Nez Perce
3 tribe, to what's Class III, and we do max out our current
4 games that we could have in the Class III. We could look
5 into Class-II gaming also, and that would help with the
6 economics of the Nez Perce tribe.

7 You know, we sent a letter from the tribal council for
8 the Nez Perce tribe, you know, opposing any further
9 regulations as far as -- it's probably something that could
10 be equitable for a number of tribes around the nation.

11 This morning -- I don't know if any of you were sitting
12 in on any of the meetings this morning, but there was a lot
13 of talk about the McCain bill, which, you know, will have a
14 big impact also. And we will need to oppose a lot of these
15 bills that are coming up, because of the impact it will have
16 on the tribes, the gaming tribes, throughout the nation, and
17 the potential tribes that are looking at gaming.

18 And it's -- I feel that it's -- we have enough
19 regulations as it is. And under current IGRA, we would be
20 able to utilize what definitions are written in IGRA and not
21 to be more burdensome, placing more federal mandates and
22 regulations on tribes. Thank you.

23 MR. HOGEN: Thank you.

24 MR. PENNEY. One of the other things that I forgot
25 to mention, regarding the Department of Justice and some of

1 the cases that they have lost thus far -- and what it
2 reminded me, when I was talking about federal policy and
3 what my views are -- I compare it to a couple of things that
4 have happened here in the Northwest.

5 When the centers from Idaho had a disagreement, what's
6 called the fish-hatchery center, which provides scientific
7 information for the regional fish managers, states, tribes,
8 and federal agencies. So rather than going along with what
9 the fish-hatchery centers in Nevada were providing, the
10 center puts it on a bill to do away with the fish-hatchery
11 center.

12 And then it also reminded me of that Ninth Circuit Court
13 of Appeals, simply because, in this case, either the
14 Department of Justice or the centers from Idaho did not
15 agree with many of the decisions by the Ninth Circuit, and
16 it is a large circuit. But the remedy for that is to split
17 it up. And that's kind of the way I view these type of
18 things.

19 And again, when I mentioned what Chief Joseph said,
20 sometimes it's hard -- and, I think, why we're all here and
21 why I mentioned this, is we may disagree on what's been
22 stated, or you may fully disagree with what we're stating,
23 but we're invited here to express ourselves.

24 I was told, by one of our elders -- when I was chairman
25 of the tribe, sitting in a general membership meeting, he

1 told me, he said, "You're here to listen to what the people
2 have to say. You're not here to argue with them. You
3 listen to what they say, and you take it into consideration
4 in your heart and try to do what's best for your people.
5 That's the reason I mentioned this, and the only reason I
6 mentioned it. It's not a reflection on anyone here.

7 Darren?

8 MR. WILLIAMS: Like I said, we don't do Class-II
9 gaming, but, you know, we faced a lot of opposition when we
10 tried to pass the initiative. But that was not able to
11 pass. A lot tribes being able to conduct economically
12 viable Class-II gaming is sometimes not leverage, but their
13 ability to work with the State as they try to get Class-III
14 gaming.

15 So when regulations like this come up, it's just really
16 important to consider the position tribes are in, versus a
17 state, and their ability to achieve economic viability with
18 gaming. Because I know that the gaming has provided a lot
19 of benefits for tribes in terms of making the governments
20 more self-determined, able to provide a lot of services to
21 tribal members, provide jobs. And it's just actually doing
22 a lot of good on the reservations right now.

23 MR. HOGEN: Thank you. Well, we fully appreciate,
24 as is sometimes said, "the road to hell is paved with good
25 intentions." That is, there have been many cases, in the

1 history of federal Indian policy, where the "great white
2 father" thought he knew best for Indian nations, and it
3 didn't always work out.

4 I think Congress was wise, when they created the National
5 Indian Gaming Commission and the Indian Gaming Regulatory
6 Act, to require that at least two members of the Commission
7 be tribal members. Of course, Chuck and I both are. We're
8 trying to do the right thing.

9 And we've studied situations like Idaho, where there's
10 been a real tussle with the State from time to time--but so
11 far so good--in terms of Class-III gaming. But you may find
12 yourself, someday, needing to turn to Class II, either
13 instead of Class III or to supplement Class III. And if and
14 when you do that, you're going to have to make, probably, a
15 significant investment in that equipment and that approach.

16 And I'm hoping that, if that time comes, it will be clear
17 that, yes, you can invest in this equipment, and tomorrow,
18 someone is not going to come along and pull the rug out from
19 under you, because there will be that clarity.

20 IGRA said tribes can use technologic aids to do Class-II
21 gaming, to play bingo, pull tabs, and so forth. But they
22 said, if it's an electronic facsimile of a game of chance,
23 then it's Class III, and you have to have a compact. And
24 therein is the challenge: Where do you draw that line?
25 When does it cease to become just a technologic aids? When

1 does it become this Class-III, electronic facsimile?

2 We've studied what the courts have said, and we've
3 studied what IGRA says and what the legislative history is,
4 and we're trying to get to the right place, trying to come
5 up with a set of rules that will permit tribes to have a
6 fast, fun, fair, profitable, attractive game, but one that
7 is clearly distinguishable from those slot machines and
8 facsimiles of the Class III.

9 We're getting lots of advice and taking it seriously, and
10 your letter will be of assistance and will be relied upon.
11 Probably, we will have a public hearing in the not too
12 distant future. We will inform you of that and invite you
13 to that.

14 And once we get all of the input that we're asking for,
15 we'll try to decide: Shall we go forward with these
16 regulations? And if so, what will they say? And I expect,
17 when that happens, if we finalize regulations, somebody will
18 take us to court, and that will be a good thing, not a bad
19 thing. We'll get clarity, then, as to where we can go.

20 But we are keenly aware of what Indian gaming revenues
21 have done for the Nez Perce tribe, and how important it is
22 that we try to foster that, not foul it up. And we'll try
23 to get to it, by your comments, as we try to get there.

24 MR. PENNEY: Thank you for your comments. I think
25 we have a good relationship with your regional folks.

1 They've been out to our headquarters several times. We
2 appreciate their being able to work with us on many issues.

3 You know, the Nez Perce tribe -- the University of Idaho,
4 the College of Business and Economics, did an impact study,
5 and we've had it updated, probably three times, over the
6 years. And I think, right now, in our entire area, the Nez
7 Perce tribe is the second-largest employer, the
8 second-largest contributor to the economy, second only to
9 the Potlatch Corporation, which is the major industry in
10 Western Idaho.

11 I just received word from one of the sources that, in the
12 very near future, that they expect the tribe will be the
13 number-one employer in the area and the number-one as far as
14 economic impact.

15 So, you know, just the -- the things that gaming has done
16 for the Nez Perce tribe -- I can recall back when Larry
17 Echohawk was Idaho Attorney General, and then it was Cecil
18 Andres -- they had a proposal to amend the State
19 Constitution.

20 And I recall them telling us, "Well, the tribes don't
21 need gaming"; that, "you submit us proposals, and we'll help
22 to find economic-development opportunities." And I remember
23 the Nez Perce tribe -- Doug Nash was one of our attorneys at
24 the time. And we submitted about 12 different proposals to
25 the State of Idaho. Not one of them was considered.

1 And when we passed Prop 1, the title of it was "The
2 Indian Gaming and Self-reliance Act," and what it told us
3 and our membership is that, as many Supreme-Court cases have
4 stated, that the states are probably the tribes' most deadly
5 enemies. They're not going to advocate for us. We expect
6 the federal government, at any level, to fully advocate and
7 try to support what we're trying to do.

8 And you know that as well, Phil. And you, as well -- I
9 know you're trying to do that. I recognize that, and it is
10 a difficult situation. But I just hope that whatever, you
11 know, the final outcome is, that it's beneficial, you know,
12 to the tribes.

13 And it's just important, economically, for us. Right
14 now, you know, we're working with the regional office, and
15 we have a new facility under construction, which will be
16 completed very soon, which will be great for our employees
17 and patrons, and so we're very exited about that.

18 But I just -- you know, just reflecting back on, again,
19 federal policies, state governments are not looking out for
20 our interests. That's why we proposed Prop 1, is that we
21 have to do it ourselves, and this is one vehicle that we can
22 do that.

23 I can't think of anything else that I'd like to share at
24 this point. Just that, you know, we will submit our final
25 comments before the deadline, and, you know, we appreciate

1 the time that we have here today, and we look forward to
2 working with you to try to resolve this issue.

3 MR. HOGEN: Very good. Thank you for your help.

4 (The consultation with the Nez Perce tribe
5 concluded at 2:07 p.m.
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A P P E A R A N C E S

For the Confederated Tribe of the Colville Reservation:
P.O. Box 150
Nespelem, Washington 98155

B.J. Whitener, Gaming Commission Director
Mike Somday, Gaming Commission Chair
Terry Finley, Tribal Council
Eldon Wilson, Gaming Commission
Brian Nissan, Tribal Council
Patty Adolph, Gaming Commission Compliance Officer
Bruce Didesch, CEO, Enterprise Corporation
Randy Williams, Casino Director
Mike Marchend, Tribal Council Chair
Gary George, CTEC
James R. Bellis, Attorney

(The consultation with the Confederated
Tribes of the Colville Reservation began at
2:29 p.m.)

1 MR. CHONEY: My name is Chuck Choney. I'm the
2 associate commissioner for the National Indian Gaming
3 Commission, and we're meeting here, on this date, July 25th,
4 2006, here in Tacoma, Washington, to discuss with you the
5 upcoming classification standards and regulation revisions.

6 And by way of introduction, I'd like to introduce Randy
7 Sitton, who is the regional director, out of Portland, for
8 this area. Next to him is John Hay. He's a senior attorney
9 in the Office of General Counsel.

10 This is Natalie Hemlock, assistant to the Commission.
11 And then Gary Peterson, a field investigator, also out of
12 Portland. And then--

13 MR. PHILLIPS: Alan Phillips.

14 MR. CHONEY: --Alan Phillips. He's a field
15 investigator out of our Sacramento office. And Penny
16 Coleman will be joining us. She'll be sitting here. She's
17 our acting general counsel. So she'll be here, providing
18 some input on everything, and can answer your questions.

19 And I'll answer as many questions as I can. John can
20 handle a lot of the technical aspects of it. So with
21 that -- and also, for the record, if you can introduce
22 yourselves and speak to the recorder so, whenever you make a
23 comment, she'll know who to attribute it to. So if you
24 could provide your name and your affiliation with your tribe
25 and your tribal gaming operations.

1 MR. MARCHEND: Thank you. My name is Michael
2 Marchend. I'm the chairman of the Colville Confederated
3 Tribes.

4 MR. SOMDAY: Mike Somday, chairman of the Colville
5 tribal gaming commission.

6 MR. WHITENER: B.J. Whitener, director of the
7 Colville gaming commission.

8 MR. FINLEY: I'm Terry Finley. I'm the chairman
9 of the Law and Justice Committee.

10 MR. NISSAN: Brian Nissan, council of the Colville
11 reservation.

12 MR. BELLIS: My name is James R. Bellis. I'm an
13 attorney for the Colville Tribes.

14 MR. DIDESCH: Bruce Didesch. I'm the interim CEO
15 of Colville Tribal Enterprise Corporation and former lawyer
16 for the Colville Tribe.

17 MR. GEORGE: Gary George, a CTEC board member.

18 MR. WILSON: Eldon Wilson, gaming commissioner.

19 MS. ADOLPH: Patty Adolph, Colville tribes --
20 compliance officer with the Colville tribal gaming
21 commission.

22 MR. WILLIAMS: Randy Williams, director of the
23 casinos.

24 MR. CHONEY: And also joining us--you may know
25 her--is Rayanne Morris, who is also a field investigator out

1 of our Portland region, but she works out of the Bellingham,
2 Washington, office. She handles just about all of
3 Washington and, I think, part of Idaho.

4 MR. SITTON: Northern Washington.

5 MR. CHONEY: Northern Washington. So with that
6 out of the way -- I've already introduced her, but
7 officially, this is Penny Coleman. I introduced you.

8 So what we'd like to hear from you is your remarks on
9 this. And contrary to what's been going on around here the
10 last day, this is a government-to-government tribal
11 consultation. We're here to advise you and listen to your
12 thoughts and comments on this revision we have coming up.
13 And we will be glad to provide you with whatever answers you
14 might have (sic).

15 And also, if you haven't already done so, we welcome you
16 to provide written comments, and we definitely will take all
17 written comments to review. Also, all other tribes that
18 have submitted written comments, we will read them, and we
19 will take them into consideration. So this will not be an
20 effort, on your part, that will not go heeded.

21 So with that -- yes, sir?

22 MR. SOMDAY: Will these comments -- do we turn
23 them in to you today?

24 MR. CHONEY: If you would wish to have those
25 comments, your written comments, yes. And also, after this

1 discussion and these other discussions, a little bit later
2 on, if you feel like you want to provide more written
3 comments, you know, feel free to do so.

4 MS. ADOLPH: The comments are due in by August
5 23rd or sooner.

6 MR. FINLEY. My question is, though, why is there
7 a short period of time, you know, to prepare those comments
8 when the technical standards haven't even been published
9 yet?

10 MR. CHONEY: Well, we submitted technical
11 standards well over a year ago, but we got side-tracked on
12 other issues, and they just kind of just sat. And we re-did
13 them. We updated them, so to speak. And we're going to be
14 releasing them, probably, within the next week or so. And
15 we're going to go public with that. And we're going to try
16 to get them in at the same -- you know, the written comments
17 on them at the same time.

18 And right now, as it stands, August 23rd is the deadline
19 to get the written comments in. However, we're beginning to
20 get the feeling that we might adjust that. But we can't
21 guarantee that right now. But I think, most likely, we're
22 probably going to extend it little. And if we do, we'll
23 notify the field as soon as we can, by way of our Web site,
24 and we'll also put it in the Federal Register. So just
25 continue looking at our Web site, because this is a matter

1 of some serious importance.

2 The tribes we spoke to yesterday -- we spoke to nine
3 tribes yesterday, and we've spoken to quite a few this
4 morning. After you leave here, we've got four more tribes
5 to speak to.

6 Then we're leaving tonight. We're flying to Ontario,
7 California. We're going to be there for two days, and we're
8 going to speak with, probably, about 20, 25 more tribes
9 there in California. The week after, then we're going out
10 to Oklahoma. We're going to be there for two days, and I
11 think we've already got 25 tribes already scheduled, all on
12 this Class-II standards revision.

13 And one of the questions I'm sure you're probably going
14 to be asking, one of the requests, is: Are we going to have
15 a public hearing? Right now, we're leaning towards that
16 way. We haven't fully decided. We've been seriously
17 considering it, in-house. But I think, right now, Chairman
18 Hogen is leaning towards having a public hearing. And
19 again, whenever that becomes official, we will let everyone
20 know.

21 Yes, sir?

22 MR. SOMDAY: That's encouraging, to have a public
23 hearing. What would cause the NIGC to not have public
24 hearings?

25 MR. CHONEY: Well, we're being pushed by all the

1 tribes to, you know, do something: either do this, or not
2 do it. So in order to do it -- give it the proper address,
3 a lot of the tribes say: We want to have a public hearing,
4 to give vendors, manufacturers, tribes that haven't really
5 had a chance to really have an input, give them a chance,
6 give them an opportunity to provide their input before we
7 write the final regulations. And I seriously -- I kind of
8 think we probably are leaning towards having a public
9 hearing.

10 MS. COLEMAN: But one of the reasons why we didn't
11 go with a public hearing--and, in fact, it was the reason we
12 didn't go with a public hearing during this comment
13 period--was because, in our consultations that we had prior
14 to this, we had the advisory committee. But we also had
15 public hearings, several public hearings, on both the
16 regulation proposals and on the Johnson-Act proposals.

17 And one of the things that we were told repeatedly, by
18 the tribes, is that they didn't consider that to be adequate
19 consultation. They wanted to sit down, face-to-face. And
20 I'm sure that the amount of times that you have had the
21 opportunity to meet with the commissioners is unprecedented.
22 In the 25 years that I've been in Indian law, I've never
23 seen another agency which has spent the amount of time and
24 energy in traveling, to make sure that they made themselves
25 accessible.

1 And that was the reason why they decided to do exactly
2 what they've done: Come here and sit down with you.
3 Instead of having a big public hearing where you had to get
4 up at a mic and speak at it, they wanted to be able to talk
5 face-to-face, across the table, to you.

6 MR. FINLEY: Yes, but how many smaller tribes are
7 being hurt because they don't get to consult with you
8 face-to-face? You're looking at about, what, 541 tribes
9 throughout the United States? And you're probably meeting
10 with, maybe, 20 percent of that?

11 MR. CHONEY: Well, we're giving everyone the
12 opportunity. We announced this particular consultation in
13 the Federal Register.

14 MR. FINLEY: Yeah.

15 MR. CHONEY: And we gave everyone an opportunity,
16 and we encouraged people to participate. We had our
17 regional directors, in our six regions, contact their tribes
18 to advise them, you know: "In case you all missed it, there
19 is a notice in the Federal Register," you know, "if you want
20 to participate in it."

21 And of the 400 -- I think, about 420 gaming tribes -- of
22 course, we don't sit down with everyone, because, like
23 here -- there's a lot of tribes in the Pacific Northwest
24 that's not here. For whatever reason, they elected not to.

25 MR. FINLEY: But what you do directly affects

1 every one of those tribes.

2 MR. CHONEY: Exactly. That's why we encourage
3 everyone to come to participate. Now, what we do -- we'll
4 get the total number of tribes that requested for here --
5 we're here for two days. If need be, we could extend it for
6 another day, if needed. But we just had -- I think it's
7 going to be about 20 tribes here. But everyone had the
8 opportunity. And not only consultation for this issue, but
9 other issues, they don't participate.

10 MR. HAY: We tried to pick locations that were
11 convenient. That's why we picked places like Denver and
12 Minneapolis, that had major airline hubs. We came here
13 specifically because of the gaming conference that was going
14 on. We thought, since everyone was going to come here
15 anyway, it would be easier to do. And we also picked
16 Washington, D.C., because the BMI was holding a meeting, and
17 a lot of tribes would be in town for that.

18 Obviously, if we had unlimited resources, we could go out
19 to every single tribe and sit in their homes and speak with
20 their leadership directly. We just don't have the money to
21 do that.

22 MS. HEMLOCK: No tribe was ever turned away when
23 they requested a meeting. Our schedule was full, but we
24 made sure that everyone who wanted a meeting could meet with
25 us.

1 MR. SOMDAY: But those that have lower incomes--
2 do not have casinos, or federal highways going through their
3 reservations--cannot afford to send delegations here. And
4 IGRA defines what an Indian tribe is. There are small
5 tribes; they too have bona fide questions and bona fide
6 concerns to be addressed but do not have equal opportunity.

7 MR. CHONEY: Well, those tribes like that, they
8 could either come here, or they can write us a letter, which
9 we do receive a lot of letters from non-gaming tribes, small
10 tribes that are thinking about starting a game.

11 And also, we've met with a lot of tribes the last two
12 days who are not gaming tribes. But they have a vested
13 interest because, somewhere down the line, they're going to
14 want to eventually get into gaming. So they want to get in
15 on the information.

16 MR. MARCHEND: Before we get too much farther
17 along, I would like to just make some introductory comments
18 about our tribe. We're here to represent our tribe, first
19 and foremost.

20 For your information, we're located in Eastern
21 Washington. We have a fairly large reservation. It's
22 almost the exact same size as the state of Connecticut,
23 about 2100 square mills. And it's primarily timbered land,
24 forest land. Our primary economy is timber, everything
25 related to timber, from growing trees to harvesting them.

1 We run two operations, to mill it into boards and plywood,
2 and almost all of the economy revolves around timber and
3 those resources.

4 It's a real isolated land, but it's very beautiful land.
5 A lot of our people are involved in our history, and a lot
6 of our people still live very traditional lifestyle. They
7 still hunt and fish. It's a very important part of their
8 lives. It kind of all works together for us.

9 We've been involved in economic development for --
10 probably since the 1970s. We had -- actually, back in the
11 1980s, we created a separate corporation, separate from our
12 council, to run the businesses. We also split off our court
13 systems. We have an independent court system that's been in
14 place. Both the courts' and the businesses' separation
15 happened about three decades ago. They have been in place
16 for many years.

17 We have our own police department, our own game warden,
18 our own court system, our own -- there's lawyers everywhere,
19 it seems like.

20 (Laughter.)

21 MR. MARCHEND: And then we've been managing our
22 resources and regulating our resources, enforcing our laws
23 for many, many, many years, and we have a lot of experience
24 with that. There's a large land area, and it's very much --
25 even though we're part of the United States, we're almost

1 like our own little country there, just partly because of
2 the isolation. There is no one else around.

3 But we currently operate three casinos. They're pretty
4 small casinos, but there are casinos, and they're important
5 for jobs, and that's why we're in that business. We employ
6 our people there. We do hire nonIndians, but, I think, at
7 two of our casinos, we have 80-percent tribal members. And
8 we have one casino at Lake Chelan. I think it's the other
9 side. We employ 80-percent nonIndians in that community.
10 But primarily, we're in it for the jobs and the employment.

11 We've also been regulating ourselves since before we had
12 an approved compact; and to us, the regulation is very
13 important as far as exercising sovereignty, and also for the
14 jobs. It really concerns us a lot when we're here to talk
15 about what the state wants to do to increase the regulatory
16 process. We're concerned about the loss of jobs also. It's
17 a very important part of our economy.

18 And because of our isolation -- we're four hours from
19 Seattle, by car. Our casinos are three hours from Spokane,
20 by car. So we're way out there, you know. And it creates
21 problems when Olympia tries to send people out there. They
22 have a hard time reaching out to remote parts of the state.
23 And the same from the Spokane side.

24 So we've always had to manage our own resources and
25 enforce our own laws. And, you know, if there's a crime or

1 something, if you call the nearest community, it would be
2 hours before they got there. So we take responsibility for
3 managing our own reservation. That's just the way it's
4 always been since I've been alive, probably before I was
5 alive. I just wanted to give you an idea about that.

6 It's also an economically depressed area. Eastern
7 Washington has very high unemployment. Even though
8 Washington State's economy has been booming for the last
9 couple decades, it really has not hit the Eastern Washington
10 side at all. You know, and there's been a, pretty much,
11 outmigration of population, in general, in Eastern
12 Washington. The economy has been depressed; very high
13 unemployment.

14 Probably the only good -- the only good news in Eastern
15 Washington is things going on with the tribes in Eastern
16 Washington; you know, the Colville tribe, the Yakima Tribe.
17 We've become the major employers in the eastern part of the
18 state. We operate in Okanogan County, Ferry County, parts
19 of Stevens County, Chelan County. We're the biggest
20 employer over there, with our timber-based businesses and
21 our casinos.

22 Our casinos are not the biggest part of the economy, but
23 they're a very important part of it. So it's really just
24 keeping them alive, and struggling. It's been a real
25 struggle. The economy is really tough over there. But

1 we've been surviving and kind of learning as we go along.

2 So any time there's talk about changing the regulations
3 or changing what we can do, it really concerns us a lot. It
4 directly impacts our employment and our revenues, and it has
5 an impact on us. So we're very concerned about that.

6 I think we've demonstrated, for many years, that we've
7 been able to regulate ourselves. We take a lot of pride in
8 that. We invest a lot of our money into it also. We want
9 to have good operations.

10 We operated for many years without a compact. The
11 federal court system litigated that for many years, and we
12 had -- so because of that litigation scenario, I think we
13 probably overregulated ourselves, because we were concerned.
14 A lot of people were watching what we were doing. So we
15 have a track record in place. So we have a --

16 I could talk about my tribe for days and days and days,
17 but I better turn it over to my partners. I just wanted to
18 let you know that we are probably a lot different than a lot
19 of the tribes in this state.

20 Also, a lot of our -- we're a confederation of tribes.
21 We come from 12 different tribes, so our tribes originally
22 came from areas like -- mostly Eastern Washington, but also
23 from Oregon and Idaho and Western Montana, Southern British
24 Columbia. So when we talk about traditional territories and
25 peoples, it's basically the whole Northwest.

1 So I just wanted to give you a picture of what our tribe
2 is and where we're at, so thank you.

3 MR. CHONEY: Thank you.

4 MR. SOMDAY: Executive Order 16375, back in 2002,
5 I think it is, promotes Indian self-regulation and
6 self-government, etcetera. Today, it's unheard of. You go
7 back 100 years ago, we're the same sovereign nation we were
8 100 years ago; same independent, sovereign nation.

9 If your ancestors were treated like that, treated as
10 though the Indian tribes nowadays cannot conduct gambling--
11 Class I, Class II, or Class III--you'd be back in D.C. I
12 think you'd expect a delegation going back to D.C.

13 Let me read you something. "Indian Tribes that are
14 involved in gaming are capable managers, honest managers,
15 suitable, fair, generous, contribute to local economies, are
16 employers of Indians and nonIndians. They're" -- "as I
17 pointed out, they're heavily regulated, even by our own
18 commission. They are in compliance with statutes, laws,
19 memoranda of understanding, compacts, have public trust,
20 educated and trained, sovereign, still understand and have
21 respect for culture and spiritual values, and do not need
22 legislative paternalism. We are capable of self-
23 determination."

24 I think, if there were true consultations -- just like
25 you kind of indicated today, no one is in favor of the new

1 definitions, etcetera. Why not consult with the tribes
2 first? That's the purpose and mission of the NIGC? To
3 consult with Indian Tribes in government-to-government
4 consultations.

5 We asked that we not be paraphrased, we use the words
6 verbatim, as we're speaking, and the reason for them.
7 Because a lot of Indian tribes will probably not be able to
8 consult, we would like a list of who you consult with and
9 who you did not consult with.

10 MR. CHONEY: Well, probably -- you know, we've
11 been asked this question most of today and yesterday and
12 last week, when we were in Bloomington, Minnesota; consulted
13 with the Northern Plains tribes: Why are we doing this?

14 Well, the answer that we determined is that, when myself
15 and Chairman Hogen came on the Commission, in December of
16 2002, Chairman Hogen was a previous commissioner in the mid
17 '90s, so he had already had experience in being on the
18 Commission.

19 And he saw early on, and he conveyed to myself and former
20 commissioner Nelson Western that there's a problem in Class-
21 II gaming and Class-III gaming. And the problem is: You go
22 to some parts of the country, some casinos, you look at a
23 certain machine, you can't tell whether it's a Class-II or
24 Class-III. So you're bordering on some illegal acts here.
25 And we've been basically charged, by Congress and also by

1 Senator McCain, to clarify this.

2 MR. SOMDAY: Who doesn't recognize the machines,
3 Class II or Class III?

4 MR. CHONEY: Regulators; and also patrons.

5 MR. SOMDAY: Is it necessary that patrons
6 understand if it's a Class II or Class III?

7 MR. CHONEY: Well, patrons, they go in there for
8 the entertainment value. They'll play a machine, and they
9 don't really care if it's a Class II or Class III as long as
10 they're getting entertainment value.

11 However, when our regulators go in there--not only NIGC
12 regulators, but State regulators--they'll look at the
13 machines -- and this isn't just necessarily in Washington
14 State. I'm talking about other states that are -- in order
15 to have Class III, of course, they have to have compacts.

16 And some states, like Oklahoma, which, they've got very,
17 very limited gaming compacts -- they're predominantly Class
18 II. State of Florida is strictly Class II. You go into any
19 gaming operation, tribal gaming operation, in the state of
20 Florida, and quite a few in the state of Oklahoma, you can't
21 tell whether it's a Class-II or Class-III machine. And
22 according to the statute, that's an illegal act.

23 MR. SOMDAY: If who doesn't recognize it as a
24 Class II?

25 MR. CHONEY: Excuse me?

1 MR. SOMDAY: If who doesn't recognize it as Class
2 II or Class III?

3 MR. CHONEY: Regulators.

4 MR. FINLEY. But, you know, I guess that gets down
5 to the fact that the court cases that you guys did fight,
6 you lost. And so, you know, that in itself proves that they
7 must have been Class-II machines, not Class III.

8 MS. COLEMAN: Maybe I can clarify that a little
9 bit. Mainly, court cases we didn't fight and lose. Mainly,
10 we won, because we were on the side of the tribes. In the
11 Multimedia cases, which are the main bingo cases, the start
12 of that was that opinion that was issued at a time where I
13 was acting general counsel again, and Phil was an associate
14 commissioner, and he and I actually worked on that opinion
15 together, on the MegaMania opinion that was issued.

16 And not everyone agreed that MegaMania was a Class-II
17 bingo game. As a matter of fact, there was very strong
18 disagreement, and it's one of the reasons why the United
19 States Attorneys did bring a couple of cases against
20 Multimedia for having those bingo machines in there. And
21 when the U.S. Attorney lost, the court -- it was because one
22 of the things the court said is that the NIGC had it right:
23 that MegaMania was a Class-II bingo machine.

24 And then, when it came to Lucky Tab II, you're right.
25 When we first started out, we said: Lucky Tab 2 is Class

1 III. But when a court said, "No, you're wrong. It's Class
2 II," we said, "Okay, that's fine with us." And we went
3 forward.

4 And so, in the Santee court case, what happened there
5 was: We had told the Santee Sioux tribe that they could go
6 ahead and play Lucky Tab 2. Unfortunately, the U.S.
7 Attorney didn't agree with that decision, and so there was
8 litigation.

9 But as a general matter, the NIGC has tried very, very
10 hard to be flexible, to try to understand these games, to
11 help tribes figure out what's Class II and what's Class III.
12 And it's been very difficult, and tribes such as yours, your
13 gaming commissioners will often call me and say, "Is such
14 and such a game a Class-II game?"

15 And right now, about all I can say is, "Well, is it
16 subject to one of our gaming opinions? Is it the exact,
17 same game that's in the opinion?" And if they can say
18 "yes," I can say, "Yeah. Then it's Class II." And if they
19 can't say "yes," well, then, I can't tell them, for sure,
20 whether it's Class II or Class III, because the inner
21 workings and the outer workings do seem to make a
22 difference.

23 When the games first started out, they were just even
24 eliminating the bingo card. They didn't even bother to have
25 those. And so we had to step in and say, "Wait a minute.

1 In bingo, you pretty much have to have a bingo card. That's
2 what the statute says." And so those are the kinds of
3 issues that we've been dealing with.

4 And part of the reason why the Commission finally got to
5 this point, of writing regulations, is because we were
6 dealing with each one of these very piecemeal, and it wasn't
7 a very efficient system.

8 MR. BELLIS: We're very highly concerned about the
9 relationship between Department of Justice and the
10 Commission. And it's our understanding that, while you're
11 going to make available the recorded proceedings here, that
12 there is no recording of the discussions you had early on
13 with the Department of Justice. Is that correct?

14 MR. CHONEY: That's correct.

15 MR. BELLIS: And that really troubles us, because
16 we perceive the historic relationship we've had with the
17 National Indian Gaming Commission as being one that really
18 was designed to try to foster economic development with the
19 tribes and to foster a healthy gaming environment, but one
20 that definitely assisted tribes in their economic-
21 development goals.

22 We don't see that DOJ has that mission. We see the
23 DOJ--both in the litigation it's involved in involving
24 tribal gaming, and elsewhere--has been -- has harmed tribes
25 throughout the country, and it's harmed us in particular.

1 The Johnson Act is not our favorite topic to talk about.

2 MR. CHONEY: Well, it's actually not ours, either.

3 (Laughter.)

4 MR. CHONEY: You know, we were going forth with
5 this -- we were hoping to have this accomplished by a year
6 ago this past June. That was our original deadline. Early
7 on in the process, we asked DOJ for their input, and we
8 never heard anything from them. We kept asking.

9 Finally, just as we were getting ready to go to the
10 Federal Register, here comes DOJ, telling us that "what
11 you're going to do is in violation of the Johnson Act." We
12 disagreed with them, so we had quite a few meetings with
13 them all last summer. I mean, I'm talking about some
14 contemptuous (sic) meetings. We had some -- almost shouting
15 matches with them.

16 They wouldn't budge; we wouldn't budge. We wouldn't
17 compromise; they wouldn't. We would meet sometimes and, all
18 of a sudden, they'd back off. They would not compromise
19 with us because they felt so strongly that they were right,
20 even though they lost those three major cases, which Penny
21 reminded them that "you weren't" -- "you were stomped in
22 those cases." And they didn't like that at all.

23 But we were at an impasse with Justice on this issue.
24 Finally -- finally, that's when Senator McCain got involved
25 in it. He basically told the chairman and Tom Heffelfinger,

1 who was representing Justice at that time -- he said, "You
2 will come to a compromise, you will make a correction here,"
3 he said, "or I will."

4 And that would be the worst thing -- the worst thing, to
5 have this taken out of our hands and put in the hands of the
6 Congress. That way, nobody would have control over it. We
7 wouldn't have control, Justice wouldn't have control, and,
8 certainly, the tribes would not have control.

9 There would be no consultation meetings. They would get
10 a senator to introduce this package and, next thing you
11 know, here it comes, put into law that nobody will like.

12 MR. BELLIS: But, Mr. Commissioner, I think that's
13 exactly what we're looking at now. We're looking at a bunch
14 of laws that people are fixing to shove down our throats
15 whether we like it or not, and we're looking at our
16 regulatory partner, who we perceive -- we perceive you are
17 jumping the gun here. We really do.

18 We've got no new laws enacted, and we really question
19 whether or not you even have the authority to go into this
20 depth without some changes in the basic foundations of IGRA.
21 But we think that, basically, the environment we're now
22 facing if you go forward with these, along with what
23 Congress is doing, it's going to seriously injure our
24 ability to survive economically. And I think you've heard
25 that from other tribes as well.

1 MR. CHONEY: Yeah, we have. Well, right now,
2 there is no guarantee that this is going to go forward as a
3 proposal, rule, or, subsequently, law.

4 MR. SOMDAY: We cannot be expected to know that.

5 MR. CHONEY: Well, we don't expect you to know
6 that. That's why we're here. We're getting your input in
7 this, and we're getting input in this, and we're getting
8 input not only from your tribe, but other tribes here at
9 this meeting, that you don't like it, that it's hurting you.
10 And that's what we're here to find out, for you to tell us
11 that.

12 MR. SOMDAY: I have a follow-up question. I asked
13 you earlier, and you said because regulators didn't
14 understand the difference between the tribes using Class
15 III; and I asked you who, and you said "we," meaning the
16 NIGC. Okay, IGRA and public -- Executive Order 13175 says
17 Indians will be the primary regulators, not NIGC.

18 We know the difference between Class II and Class III, so
19 where's the problem?

20 MR. CHONEY: Well, sir, I hate to disagree with
21 you on that, but I don't agree with you on that, because we
22 go out to all these states, and it's Class-II states, and we
23 walk into some of those facilities, and all we see is Class-
24 III machines. So somebody in that facility doesn't know the
25 difference between Class II and Class III, and they're

1 regulators.

2 MR. FINLEY: I'd like to say, though, on that --
3 talking about appearance, and especially in this state -- I
4 would think in most states, it would be -- Class III is
5 defined by the compacts. And then Class II, or anything in
6 between there, would be defined by the tribe; that's a
7 sovereign-nation issue. And this is taking that away from
8 the tribe.

9 And, as a regulator, I'm kind of concerned that a lot of
10 these proposed regulations that are being put out are based
11 on appearances. You know, I mean, the appearances --
12 that's, like, really what they have on a lot of those
13 machines, are just a movie. I mean, you've got a bingo game
14 going there, and then it shows a movie. It wouldn't matter
15 if it's Harry Potter or a picture of a reel, you know.

16 And I think -- and that kind of concerns me, that you are
17 trying to set up regulations based on appearances only -- or
18 not, maybe, only; but, you know, the speed of the game and
19 appearances. And I think that, primarily, the issue goes
20 back to leaving it to the tribes to decide what is Class II;
21 and maybe with the NIGC.

22 But, I mean, that's the way our group is set up. Class I
23 is for the tribe, Class II is for the tribe and the NIGC,
24 and Class III is determined by the tribe and the State. And
25 this is taking a lot of the decisions away from the tribe

1 and moving it over into where the states are now in control
2 of it. And I think that's what bothers me about these
3 proposed regulations.

4 MR. SOMDAY: It's taking out due process. You
5 can't appeal the decision.

6 MR. BELLIS: I think the other thing that makes us
7 different and that we want the National Indian Gaming
8 Commission to acknowledge, is that every tribe is different,
9 for each of us is a sovereign, so we're interested in
10 talking to you about our particular relationship and our
11 particular regulatory environment.

12 It may be so that, if you go to Utah, something else
13 happens, but we're not in Utah. We're where our homeland
14 is, and that's what we want to talk to you about.

15 And the other thing we want to say is that, in
16 Washington, as you know, Class III is regulated to the point
17 where it's barely Class III. I mean, we're talking about,
18 essentially, lottery games or pull-tab machines, that
19 they're electromechanically aided and therefore fall into
20 the Class-III definition. But it is the real shallow end of
21 the pool when you talk about Class III.

22 And so, for us, having a wide and exciting variety of
23 Class-II machines is very important, because we are not
24 competitive, because of our geographic location, without
25 having as many advantages as we can. And what we see when

1 you focus on appearance in the regulations and you focus on
2 things like slowing down play -- we fought for over two and
3 a half years, with the State, about improving the speed of
4 play on the Class-III machines by barely a second. But it
5 was worth it in terms of keeping public interest up and
6 making the games more interesting.

7 We spent years fighting about exactly the kinds of things
8 that you're now just -- we perceive as sort of nonchalantly
9 laying out there. And these kind of appearance changes
10 really impact, especially, a tribe like ours, that's in a
11 remote geographic lotion. We need the best, most exciting
12 things we can find. And if it takes a movie of Harry Potter
13 to make it happen, then that's what it takes.

14 I don't know. Sometimes I'm just stunned at the things
15 that people think are fun to play, but they do. And that's
16 not my job. My job is to try to make sure that we have the
17 maximum opportunity possible.

18 And what I think this tribe is concerned about is that we
19 don't see that these regulations foster what IGRA was
20 intended to do. We see this as shutting down economic
21 opportunity for us and for other tribes in a similar
22 situation.

23 So we're asking you to really take a look at this and
24 say: Is this necessary or appropriate to do? And when you
25 focus on appearances and slowing things down, is that really

1 helpful? Is that really going to do anything that benefits
2 tribes in light of all the regulatory power and legislative
3 threats that are out there anyways? Is this in any way
4 going to dovetail with what's going on?

5 And if you're planning on this dovetailing on what is
6 proposed but not yet adopted, we ask you to wait. We really
7 think it's important that you have the legislative authority
8 to do these things. So if Congress has not yet acted, if
9 the good senator has not yet got his bill through, we think
10 it's premature to be jumping to his tune, because his tune
11 is not what he tells you personally. His tune is what he
12 can enact.

13 MR. SOMDAY: One other issue. Because of the
14 technological changes, the redesigned electric games or
15 whatever you call it, the manufacturer is going to have an
16 extreme difficulty getting funded. You can go to some bank
17 for a few million dollars to furnish 500 machines for the
18 tribe, and that's Class III. His machines are not -- you've
19 got to have money. Money-lenders are going to know that,
20 but it's going to be very difficult to get any Class-II
21 machines designed and built and provided.

22 MR. CHONEY: Well, we've heard that also, about
23 the lending institutions, that they're going to be very
24 reluctant to lend the tribes any money for manufacturers.
25 And my personal thought on that is, you know, that should

1 not affect tribes. You know, that's going to affect the
2 manufacturers. They'll come up with the funding, if they
3 don't already have it.

4 MR. SOMDAY: That's if we're going to get new
5 machines, viable machines, and not be liable to lose those
6 machines because they're Class III instead of Class II. And
7 there's no appeal. That's not good either. Is that fair?

8 MR. CHONEY: Can you answer that?

9 MS. COLEMAN: Well, with respect -- you're talking
10 about the processing for the certification. And one of the
11 things that we did note is that, although there's an appeal
12 process if we object, there's no appeal process if there is
13 a determination that it's Class III and you disagree. And
14 we hear you. We'll look at it. We understand that's an
15 issue that we need to address in the proposed regulations.
16 Because there needs to be a process.

17 MR. JOSEPH: In the state of Washington, when you
18 put out RFPs for a machine, the response from manufacturers
19 is basically: Yeah, we can make it, but Washington is such
20 a niche market because of the way the state is so
21 process-oriented, and it's not worth their time and trouble
22 to try to make those kinds of machines.

23 I don't know if what you're proposing is going to make it
24 even smaller. But it has been a problem for us.

25 MR. CHONEY: Well, the experience we've had with

1 manufacturers over the years, technology is changing so fast
2 that they'll keep up with it. They'll come up -- because
3 they're going to have a vested interest in this. They're
4 constantly contacting us and constantly contacting Penny and
5 her other staff attorneys, for opinions. They'll come up
6 with a prototype, and they'll say: Are we within the ball
7 park on this? Especially if it's a Class-II machine, newer
8 machine.

9 MS. COLEMAN: Commissioner Choney, we're running
10 out of time. I did want to ask one quick, additional
11 question. Do you have Class-II games now? Do you have
12 Class-II machines?

13 MR. WILLIAMS: Yes. Not many.

14 MS. COLEMAN: Not many?

15 MR. WILLIAMS: There are plans that are looking
16 for some. And right now, we have Class-III machines.
17 They're MegaMania.

18 MS. COLEMAN: They're the MegaMania? They're the
19 old MegaMania? Oh, really. How old -- I mean, how many do
20 you have of those?

21 MR. WILLIAMS: Four.

22 MS. COLEMAN: And do people still play those?

23 MS. ADOLPH: They love them.

24 MS. COLEMAN: They love them? There's enough
25 people to keep four machines busy?

1 MR. WILLIAMS: Oh, yeah.

2 MS. COLEMAN: And are they just linked in-house?
3 Is that how you're doing it?

4 MR. WHITENER: They're right there.

5 MS. COLEMAN: Okay. But you're looking at the
6 quicker ones as far as the ones that you're going to be
7 bringing in?

8 MR. WHITENER: Yes. Colville is, like I say,
9 remote, and the casinos are part of the compact, the normal
10 675 by Washington State, their machines, and that's not very
11 many when you split that up among three casinos. That's the
12 main issue.

13 MS. COLEMAN: How close are you to reaching that
14 675?

15 MR. FINLEY: We're there.

16 MS. COLEMAN: You're there. Okay.

17 MR. DIDESCH: The other thing I would submit to
18 you -- and Rit alluded to it -- there's an argument that
19 there is not Class-III gaming in Washington, because of the
20 requirements -- and some of us, as we talk about the
21 technology you're talking about, you could argue that when
22 you litigated the case, Penny, many of the issues you were
23 raising in that case is a better game than what the State of
24 Washington was willing to negotiate.

25 And if you look at the parameters -- so with your

1 assistance, NIGC, you might be able to give us an opinion
2 letter saying all the games in Washington are Class II, and
3 therefore, we don't need to compact with the State, because
4 that's all we play. Food for thought.

5 MR. BELLIS: That's one of our final comments--

6 MR. FINLEY: It works both ways.

7 MR. BELLIS: --that we think is very important for
8 you to hear from us, is that, because of what happened in
9 the Seminole litigation and because of what's happened
10 since, in the development of the law of compacts, Class II
11 is really the last refuge for tribes that want to be
12 self-regulating and self-fulfilling without having to deal
13 with a troublesome state. We ourselves had -- you know, we
14 had a bad-faith lawsuit, and ours came out different because
15 it was pre Seminole.

16 But we think that, by doing what you're doing here,
17 you're also really narrowing down what every tribe's options
18 are; because, in many ways, our relationships with the
19 states are entirely dependent on their local politics, which
20 is a real bad place for a tribe to be.

21 And we think that, by tightening down on Class II--we
22 think, prematurely--and without, perhaps, sufficient
23 authority to do so, you're really going to narrow down the
24 options for every tribe in the country at a time when they
25 need to have those, because United States Supreme Court said

1 that what Congress wanted to give tribes in IGRA, they can't
2 have.

3 MR. CHONEY: Okay. I thank you for your comments,
4 and if you haven't already provided a written comment, feel
5 free to do so. If you have one you would like to leave with
6 us or if you would like to work on one, again, get it to us
7 as soon as possible, and we will take your comments into
8 consideration.

9 MR. FINLEY: When we get a copy of the technical
10 standards, we'll have more comments then.

11 MR. CHONEY: Okay. Thank you.

12
13 (The consultation with the Confederated
14 Tribes of the Colville Reservation concluded
15 at 3:15 p.m.)
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A P P E A R A N C E S

For the Nooksack Indian Tribe
P.O. Box 157
Deming, Washington 98224

Edward Wurtz, Legal Counsel
Mike Jeffries, Gaming Commission Director
Mike Wootan, Casino General Manager
Narcisco "Narz" Cunanan, Tribal Chairman
Bill Coleman, Tribal Council
Scott Taylor, IT Director
Rick Garcia, Tribal Council
Candace Kelly, Tribal Council
Sandra Joseph, Treasurer
Gary Kentner, Director of Operations
Kent Caputo, Attorney

(The consultation with the Nooksack Indian
Tribe began at 4:02 p.m.)

1 MR. CHONEY: My name is Chuck Choney. I'm
2 associate commissioner with the National Indian Gaming
3 Commission. With me is Penny Coleman, our acting general
4 counsel. From her office is Mike Gross and John Hay. And
5 from our Portland office is Randy Sitton, regional director,
6 and Rayanne Morris. And seated next to me is Natalie
7 Hemlock, from our NIGC staff. And Alan Phillips, from our
8 Sacramento office. He's a field investigator. I guess you
9 want to provide us with a PowerPoint, so go ahead and
10 proceed.

11 MR. CUNANAN: Okay. I just want to say a few
12 words. I brought everybody that is involved in our
13 property, everybody that's important on this casino, which
14 is with the Nooksack tribe. So these regulation changes are
15 real important for our tribe.

16 And Sandra is going to speak, and then we're going to
17 start off with Mike Wootan with PowerPoint. So I want to
18 thank you again for your time.

19 (Showing PowerPoint presentation.)

20 MR. WOOTAN: I'd like to give everybody a quick
21 presentation. This is a presentation that we went through
22 the community, starting back in early May, and talked about
23 this project that we had really started on a year ago and
24 had commissioned an environmental assessment of the
25 property, done some traffic studies, and taken a hard look

1 at the trust land. The tribe had asked me to engage in the
2 fact finding, to see if it was feasible to build this
3 property. We had a feasibility study done and then followed
4 that process. We later went out and had some community
5 meetings with the communities that would be most affected
6 around the property.

7 And a little bit about the tribe, for those of you who
8 don't know. The tribe is located 75 miles east of
9 Bellingham, in the small town of Deming, Washington. The
10 tribe was recognized in '73; and there's 444 1/2 acres;
11 1800-plus enrollment; and the tribe is governed by elected
12 officials: chairman, vice-chairman, secretary, treasurer,
13 and four council members.

14 The project is Nooksack's Northwood Crossing Casino. The
15 general contractor would be the Nooksack Construction
16 Company. That project is on 20 acres of pre '88 trust. It
17 would be a 35,800-square-foot casino, about the same -- it's
18 a little larger than the present Nooksack River Casino.
19 That casino would create 250 jobs and \$6 million in annual
20 payroll for that area.

21 The Northwood Crossing Casino would have 500 Class-II
22 gaming devices, a 30-seat Class-II poker room, 150-seat
23 restaurant and buffet, a 40-seat sports bar and pizza bar,
24 and a gift shop.

25 This is a picture of what that casino will look like when

1 it's completed. A picture of the floor plan. Northwood
2 Crossing. And these are some recent photos of that
3 construction site. Most of what's going on right now is
4 ground and fill work. You can start kind of seeing the
5 shape of the casino floor plan show up.

6 And we just went through a few pictures of kind of what's
7 going on up there where it's located. These are tribal
8 members working. Nooksack Construction is, again, the
9 contractor.

10 MR. CUNANAN: One thing I want to add is:
11 Nooksack has got traditional financing. There's no
12 partners, there's no 25 percent or 30 percent going to the
13 outside communities. It's one thing we're really proud of,
14 you know.

15 MR. WOOTAN: This was something that the tribe was
16 able to accomplish over the last two years, was to position
17 themselves with traditional financing, and this was a big
18 thing. We were in private financing prior to that. So the
19 ability to go out and finance a project like this with
20 commercial financing was very big for the tribe, and it
21 keeps most of the revenue within the tribe and working with
22 the tribe.

23 For those of you who don't know -- and I'll try to set
24 this map up on PowerPoint, to give you an idea of the remote
25 location of Nooksack River Casino, which is east of

1 Bellingham. And where the Northwood Crossing Casino would
2 be is right on the Canadian border. It literally is --
3 probably, about 400 yards to the back of that property is
4 really right on the Canadian border.

5 But it's still a very remote location and would be not
6 unlike the Nooksack River Casino. A lot of marketing work
7 to get customers to come to that property. It certainly has
8 a much nicer location than the Canadian border crossings.

9 We're about 60 percent Canadian customers at the
10 Nooksack River Casino, and we expect that casino will
11 probably be a much higher Canadian ratio of customers. And,
12 of course, we're always, in Whatcom County, trying to get
13 the Canadians to come across the border and spend their
14 money. Any questions about that?

15 I'll pass these out to the -- you probably want -- I
16 think Sandra is going to speak next.

17 (Bound presentation is distributed.)

18 MR. WOOTAN: Along in that packet--and you can
19 follow along with Sandra's comments--are some testimonials
20 for some school districts who are our neighbors in Deming
21 right now. It talks about the great relationship that this
22 tribe has bonded with in the 13 or 14 years they've been in
23 business. So we really are next door to a high school. And
24 that was the big issue 14 years ago. And we've developed a
25 fantastic relationship with that school system. Thank you.

1 MS. JOSEPH: Again, my name is Sandra Joseph, and
2 I'm the treasurer for our tribe. I wasn't expecting it to
3 be so crowded in here. Okay. I'll plug away at this.

4 "IGRA did not confer the right for gaming to tribes. It
5 was" -- "it limited our rights. IGRA also reserved Class-II
6 gaming to the tribes, free from interference by the state
7 governments. The spirit of IGRA and Class II was to give
8 the tribes a product that would ultimately compete with
9 Class III machines. It would also allow tribes to have a
10 bargaining chip in Class-III negotiations. Class-II
11 machines help the tribes make a profit in gaming. Your
12 regulations take all of this away. How can your regulation
13 take away what Congress has given the tribes? These
14 regulations do not seek to regulate. They seek to eliminate
15 Class-II gaming from the tribes. How can you regulate a
16 thing out of existence? And how can you, in good
17 conscience, do this?

18 "These regulations seek to change court decisions won by
19 the tribes, on Class-II machines. Only Congress can modify
20 non-Constitutional court decisions. What the Department of
21 Justice could not obtain in the courts or the halls of
22 Congress, they seek to do so through you. I understand that
23 the NIGC was an independent federal agency. Why is your
24 agency carrying firewood for the DOJ?"

25 I have to come away from my notes, and I have to say that

1 I'm speaking on behalf of my tribe. And what we're dealing
2 in building another casino is to make things better for our
3 people, for our children, for our grandchildren. I have
4 grandchildren that I have to watch out for, which -- and
5 now, to speak --

6 You know, I don't know. These are written for me, but I
7 think this is our only way that we can make funds for our
8 tribes, because, I think, as you guys know, that the federal
9 government keeps cutting; keeps cutting our programs. They
10 keep chopping away. And how are we going to -- how are we
11 going to support our tribal members?

12 What are we going to do for them? What are we going to
13 do? Like some of our elders say, what are we going to do
14 when we need a pair of glasses, or our children, our
15 grandchildren?

16 So this was economic development to our tribes. I don't
17 understand, I guess. I don't understand why this is
18 happening. Why -- why are you taking away from our people?
19 Why are you doing this? I can't understand it.

20 I thought I was going to be able to read this, but, you
21 know, it upsets me, because, you know, I just can't
22 understand why NIGC and IGRA...

23 MR. CHONEY: Ms. Joseph, let me answer part of
24 this. I don't know who wrote this for you, but they're
25 wrong. We are not intending to deprive you and your tribe,

1 or any tribe, of their livelihood. We're seeking to make it
2 better.

3 We're seeking to clarify some regulations that are vague.
4 And in a lot of states, a lot of areas, they are confusing,
5 and the tribes are suffering because of this confusion. And
6 we're hoping to clarify. We're hoping to eliminate this
7 confusion.

8 A lot of tribes out there are now getting themselves into
9 some difficulties with us because they're in violation with
10 the statute, because they're Class-II states, they're
11 Class-II facilities. People walk in those facilities,
12 thinking they're going to see some Class-II machines, and
13 you can't -- you can't tell. They've had vendors come in
14 there selling them Class-III machines but telling the tribes
15 that they're Class-II machines, when, in fact, they're not.

16 And we've also had a lot of tribes ask us: "We need some
17 help in understanding these regulations. We want to go out
18 to buy some new machines, update our machines, either buy
19 them or lease them. We don't know. We don't know if these
20 vendors are being truthful with us."

21 And that's happened more and more times than not. And
22 who pays for it? The tribes. What happens to the vendors?
23 Nothing. It's the tribes who ultimately suffer. And we
24 certainly -- certainly don't intend to deprive any tribe of
25 their livelihood, but what we feel like: It's bettering

1 these regulations.

2 MS. JOSEPH: I guess the other thing -- well, I
3 would like to know: If you're making it better, I don't
4 understand how it can be better with the way the regulations
5 are coming forward about the prohibition of autodaub; then
6 the 10-second delay; the display restriction; two-screen,
7 multiple-card display requirements.

8 I think that's -- I think what we decided is that that is
9 making the game go backwards. And we know that we have a
10 hard time -- we shouldn't be going backwards. As Native
11 people, we always look forward, but I think what this is
12 doing is pushing us back.

13 And I think what you're talking about is progress. I
14 know -- and I talked to my fellow councilmen. They always
15 say -- you know, the papers we have to live by nowadays, it
16 comes from nonIndians, people that come into our land, and
17 we have to abide by everything that is on paper. You know,
18 we never had to do that before. I don't know if you
19 understand that.

20 But we always -- what I was taught: to always move
21 forward. But, to me, what is getting sent to us is setting
22 us back, and I don't understand that. So --

23 MS. COLEMAN: Well, I am nonIndian, so you'll have
24 to take what I have to say with a grain of salt. The
25 chairman and the associate commissioner are Indian, and they

1 ultimately make these decisions, but let me try to explain
2 why I think that we felt like we needed to move forward on
3 regulations.

4 Recognizing that any one of those things that you
5 mentioned specifically are subject to change and it's the
6 kind of thing that you should be telling us what the
7 problems are and why you don't think they're appropriate --
8 but the reason why we're moving forward on this, the reason
9 why we feel it's necessary, is because tribes are doing
10 things like building casinos around a Class-II game, and
11 they're doing it not knowing whether or not their game is
12 actually Class II.

13 And there are tribes, like Seminole Tribe of Florida,
14 where we closed them down, and they are paying off on a \$9
15 million fine, because they were playing Class-III games.
16 And the Commission doesn't want to place tribes in that kind
17 of position.

18 They're obliged to regulate, just as your tribal gaming
19 commission is obliged to regulate. And the way we provide
20 advice on whether something is Class II, right now, are
21 advisory opinions that are issued by our Office of General
22 Counsel, or through enforcement actions. And so we try to
23 do a lot more advisory opinions than we do enforcement
24 actions, because advisory opinions at least just give advice
25 and don't put you in the position where you end up having an

1 NOV or closure order against you.

2 But the advisory opinions only deal with a specific game
3 at a specific time, and they don't deal with any of the
4 changes that you might want to have in the machine. They
5 don't deal with any of those kinds of things. And our
6 advisory opinions are always too slow, too late; you know,
7 you've already moved on by the time we've got one out.

8 And so the Commission, in looking at this, has tried to
9 figure out: How do we do this? And how do we do this
10 better so that tribes will have some surety that what
11 they're doing is going to be legal but it's not going to be
12 subject to actions, so that the beautiful casino that you're
13 planning is going to be profitable and still in compliance
14 with the law? And that's why they decided to proceed with
15 the regulations.

16 Now, why are there some things in there? One of the
17 reasons why those things are in there is because we were
18 looking at the statutory definition of bingo and trying to
19 put meaning to those words. And when we're looking at some
20 of the kinds of things that we're talking about, that are in
21 the draft regulations, it's because the courts have said and
22 the Congress has said that Class II and Class III should be
23 readily distinguishable and that you could tell the
24 difference between a Class-II game and a Class-III game.

25 And so we're trying to make that difference, to establish

1 that difference in a reasonable way. If it's not
2 reasonable, you know, the Commission is willing to change
3 and is interested in exactly what you think is wrong.

4 But I do know that they aren't trying to stop Class-II
5 gaming; definitely not trying to stop your livelihood.
6 They're trying to put you in a position where you will know
7 that what you're doing is not going to be subject to action;
8 that the U.S. Attorney's office won't go after you for a
9 Johnson-Act, gambling-device criminal action, so that you
10 won't be subject to those kinds of issues. And so that's
11 why they're looking at this particular regulation.

12 MR. GROSS: That's one other concern that Chairman
13 Hogen has mentioned. If he had perfected the ability to
14 speak in two different places at the same time, I'm sure he
15 would respond himself.

16 But thank you for this, by the way (indicating to
17 handout.) We'll enter it into the record in its entirety.
18 Your heartfelt questions are much more helpful.

19 Your central question is: Why? Why do this at all? And
20 one of the concerns that Chairman Hogen has articulated is:
21 Well, there's been a lot of talk about not being able to
22 distinguish Class-II games from Class-III games.

23 And while we may visit particular places and people will
24 say to us: "Well, it's clear to us," but that's well and
25 good. But the chairman's concern and the Commission's

1 concern is: Well, there is pushback. There's pushback
2 against the tribes, by the states.

3 What happens when the states -- what happens to your
4 rural casino on the Canadian border if the State of
5 Washington decides to legalize a game much like the ones
6 you're offering. Then the challenge is that much greater
7 for you to get people to go to your new facility, when they
8 could go to downtown Seattle, say.

9 And that's happening in Alabama, for example. The State
10 has legalized games very similar to the ones that the tribes
11 offer in places that their customer base find more
12 successful. And so the chairman's take, is: "Look, not on
13 my watch." He doesn't want the damage to Indian gaming on
14 his watch and the watch of this Commission. So that's
15 another reason why.

16 MR. CAPUTO: The tribe sees these regulations as
17 making the Class-II games unprofitable. We have Class-II
18 games in our Class-III casino. Mr. Wootan could explain how
19 those are working in our casino.

20 MR. WOOTAN: When we were looking at this
21 property, we were going on what we have experience with.
22 We've already experienced, you know, the use of Class II.
23 The Nooksack tribe -- the Class-II machine versus the
24 Class-III really deal with what's inside the machine. These
25 new regulations are going to make, according to the tribe's

1 view, our Class-II facility not profitable. The autodaub,
2 the 10-second delay, the screen restrictions.

3 We followed all the regulations, all the laws, up to this
4 point in order to get our financing done, in order to build
5 this new casino. And we kind of feel like the rug is being
6 pulled out from under us.

7 The tribe is -- we're finishing up our due diligence for
8 our loan. We're going to be greatly in debt, and we're
9 taking a risk on this Class-II casino; and now it looks like
10 we're taking an even greater risk than we thought before,
11 and it's because of these regulations.

12 We've stayed in contact -- I've spoken to Ms. Coleman on
13 the phone a couple of times, about our Class-II facility.
14 We sent a notice in, to NIGC, that we were going to open up
15 a Class-II facility on land that's legally allowed to open
16 up a Class II. The governor of the State of Washington has
17 concurred that it is our right to open up the casino. We
18 have no opposition from the State or local governments.

19 And our concern is that: What's going to happen if these
20 regulations are passed at the end of the year and we have an
21 opening in March and we have machines that nobody wants to
22 play and we have invested millions and millions of dollars?
23 It's going to be a tragedy to the Nooksack tribe. I don't
24 have much more to say.

25 MR. CUNANAN: Let me comment on your comments.

1 Our tribe has been in the gaming business for over 10 years
2 now, over a decade; and for new competitors to come in, that
3 are not experienced in gaming on our area, for us -- for
4 them to make us fold would be a pretty hard thing to do.

5 We survived. We are survivors. And competition is good.
6 And, you know, we relied on Canadian dollars for so long.
7 When the dollar busted up there, it almost closed us. It
8 closed a neighboring casino. You didn't know about that.

9 We're survivors. If the State opens up those machines,
10 that's something we have to deal with. We will deal with
11 it, and we will compete.

12 As far as the regulations, what we're hearing from our
13 attorney and Sandra: It's a machine killer. That will kill
14 those machines, and we will not be able to compete with
15 anybody with them. Nobody will play them. I know we're out
16 of time, and I really appreciate your guys's time.

17 MS. COLEMAN: Could I ask one quick question? Can
18 you tell me, real quickly, about the Class-II machines that
19 you do have? How many do you have, and how are they
20 playing, and are they one-touch, or the three-touch, or --

21 MR. WOOTAN: Yeah. We've been offering those
22 machines for over two years now, and we have about 30, just
23 under 30, on the floor. They're two-touch. We have letters
24 from NIGC stating that those are classified as Class-II
25 games.

1 They have the three-and-a-half-inch bingo screen. There
2 are very -- they're definitely distinguishable from our
3 Class III or "Class 2-1/2." They're not a traditional slot
4 machine. They're a central-determination-system machine.
5 And they have really competed head-to-head with what we have
6 on the floor. They're not overproducing; they're not
7 underproducing. They --

8 And all the work that the tribe has done for the last
9 year and a half was based on that product that we've
10 operated so successfully, with NIGC's blessing, that have
11 passed through two Circuit-Court rulings, that we feel meet
12 those definitions.

13 And by changing those definitions, it would certainly
14 dumb the game down, if I may use that term, to a point where
15 it wouldn't compete in this casino that the tribe's trying
16 to develop. It's not a behemoth casino; again, a very
17 small, boutique casino.

18 MS. COLEMAN: What games are those?

19 MR. WOOTAN: We have Bally's games on the floor
20 right now.

21 MS. COLEMAN: So is that the Mystery-bingo type?

22 MR. WOOTAN: No. They're the Bally's Class-II,
23 three-and-a-half-inch bingo screen.

24 MS. COLEMAN: Well, I'm trying to figure out:
25 Which advisory opinion do you mean? Do you remember?

1 MR. WOOTAN: I can't. I don't remember the
2 opinion. We certainly did our due diligence in clarifying
3 that before we ever purchased the machines and put them on
4 the floor. I know that's very important to the
5 manufacturers, to have the letter from the NIGC, because I
6 know NIGC stopped issuing letters to several manufacturers
7 during the MagaMania issues. When that was all going on in
8 Oklahoma, we watched it very carefully.

9 It was a big risk for the tribe to put these Class II on
10 the floor to test, but once we tested them, they, again,
11 became an equal-playing-field product. You know, this,
12 again, started a year and a half ago, started the idea of
13 developing a casino, again, in two very rural locations. It
14 will be very hard to market. It will be very hard to get
15 people to. Typical -- you've got games being played out in
16 tribal country all over the United States.

17 MR. CUNANAN: And that's really what our customers
18 are used to. That's what they like, and for drastic changes
19 like this, it's -- well --

20 MR. WOOTAN: It would, again -- and here we are,
21 you know, a couple of million dollars into this project, to
22 the point of no return. And, you know, really, you know,
23 looking forward in terms of these changes would be
24 devastating to this project.

25 And this project -- certainly, the State of Washington is

1 the biggest risk, just because of where we are in the
2 project. We're on -- you know, we're under construction.
3 We have our order in. We've ordered steel, we've ordered
4 concrete, we've ordered rebar. So it's -- again, it's a
5 devastating blow. To open this casino in March 2007 with a
6 product that won't compete, it would be a disaster for this
7 tribe, an absolute disaster.

8 MR. CUNANAN: I want to end, real quick, with our
9 gaming revenues and what it allowed our tribe to do. One of
10 the most important programs is a youth program that they
11 have. When our tribal members turn 14 years old, they come
12 to the tribal center, and they have a job for two hours
13 every day.

14 In order for our kids to keep that job, they have to keep
15 a 2.5 grade average. If they don't, we don't fire them or
16 anything. We make them go to tutoring for an hour, which we
17 pay those kids to go to. The last three years, 100-percent
18 graduation from the Nooksack tribe; something we're real
19 proud of.

20 We're building a lot of houses right now. We're building
21 a great-big community center, and we're building a
22 satellite -- we're scattered all over Whatcom County. We're
23 building the satellite Boys & Girls clubs and putting
24 computer rooms in there, for our children to go and do their
25 homework under a supervised setting. So those dollars are

1 real important to our tribe.

2 MR. WOOTAN: I just wanted to speak to what Sandra
3 was saying earlier, about the federal government's
4 responsibility to the Indian tribes. Everything that's
5 going on, the health dollars and discretionary dollars, the
6 war in Iraq and everything, they've been cut; and we still
7 have tribal members that are needing healthcare and that
8 want to go to school, go on to higher ed afterwards, with
9 the tribe.

10 And the federal government is pushing us to come up with
11 creative ways to do these sort of things, and that is
12 exactly what we're doing. You know, we're trying to have a
13 tribal government, trying to provide for our tribe, so that
14 they can all do what they're supposed to do.

15 I appreciate your concern about the tribe not being able
16 to tell the difference between black and white, but I think
17 Randy and -- sorry -- Randy can tell you that. If our tribe
18 knew we were doing something wrong, we would be the first to
19 know. Mike keeps a close eye on everything. Our casino
20 management, our casino crew is making sure that things are
21 going right.

22 MR. GEORGE: An example of the federal budget is:
23 10 years ago, we had just over 800 tribal members. We have
24 1800 now, and we're still getting the same health dollars as
25 we did 10 years ago. Any last words? Thanks again.

1 MR. CHONEY: Okay. Thank you for coming in.

2
3 (The consultation with the Nooksack Indian
4 Tribe concluded at 4:36 p.m.)
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A P P E A R A N C E S

For the Skokomish Indian Tribe:
N. 80 TC Road
Shelton, Washington 98584

Denese LaClair, Chairperson
Debra Byrd, Tribal Gaming Director
Gabe Galand, Attorney
Mystique Hurtado, Internal Auditor/Licensing Agent

(The consultation with the Skokomish Indian
Tribe began at 4:44 p.m.)

1 MR. HOGEN: Good afternoon. I'm Phil Hogen,
2 chairman of the National Indian Gaming Commission. With me
3 is Chuck Choney, the associate member of the commission, and
4 today we're the full Commission. With us, we have Randy
5 Sitton--and Rayanne here--our regional director from
6 Portland, who I expect you know; and John Hay, an attorney
7 in the Office of General Counsel.

8 Our acting general counsel is Penny Coleman, who is here
9 with us; and Mike Gross, who is an attorney in her offices;
10 and Natalie Hemlock, who just walked in the door, is an
11 assistant to the Commission in the D.C. office; Alan
12 Phillips from our Sacramento office, he's here; and Gary
13 Peterson also is in the Portland office.

14 We're assembled here in Tacoma, on the 25th of July 2006,
15 to discuss proposals that the National Indian Gaming
16 Commission made in the Federal Register on the 25th of May,
17 which we published a couple of sets of proposed
18 regulations--one dealing with definitions; one dealing with
19 proposed classification regulations--addressing the subject
20 of distinguishing equipment tribes can use for Class-II
21 Indian gaming and doesn't require a tribal/state compact,
22 from electronic facsimiles of games of chance, that require
23 a Class-III compact.

24 So we are eager to hear what you folks have to say and
25 the advice you have to offer us when we consider whether we

1 will adopt and finalize regulations along these lines. So
2 to begin, if you would please introduce yourselves and tell
3 us how you're affiliated with the tribe and with the tribal
4 gaming so the court reporter will know who is doing the
5 talking. So we are eager to hear what you have to say.

6 MS. LACLAIR: Denese LaClair, chairperson for
7 Skokomish Tribe.

8 MS. BYRD: Debra Byrd, executive director of
9 gaming for Skokomish Tribe.

10 MR. GALAND: Gabriel Galand, outside counsel for
11 Skokomish Tribe.

12 MS. HURTADO: Mystique Hurtado. I'm the internal
13 auditor and licensing agent.

14 MS. LACLAIR: So I'd like to go ahead and start,
15 and the first thing that I'll say is: I object to this
16 process as a government-to-government consultation. Let me
17 tell you why. I mean, there's probably many, many reasons
18 why; but, for me, I just got the letter on Wednesday, and we
19 had to fax our request to get some time. And I'm not
20 sure -- I'm sure that we're not the only tribe that has
21 trouble with mail, but I just got the letter.

22 I'm not familiar with a lot of the issues, so I'm going
23 to ask Debra and Gabe to speak to those. But also to let
24 you know that we are a small gaming tribe. I think, right
25 now, we have 81 machines, and we're going to expand to 150.

1 But we depend heavily on our leasing capabilities. So we
2 are hopeful that we can keep our leases out and put Class-II
3 machines in our facility. So it does mean a lot to us. It
4 could mean a lot for our tribe financially.

5 We're a tribe of approximately 800, and so we do depend
6 heavily -- I mean, we've been able to increase our budget
7 close to a million dollars a year, depending on the -- for
8 the lease fees, so it's something that we are dependent on.
9 We know that our revenues will go up substantially with
10 Class II machines in our facility. So that's really all I
11 have to say, and Debra will cover the more technical things.

12 MS. BYRD: Well, one of the main concerns that we
13 have are some of the restrictions that the new regulations
14 have. Like, for instance, we have so competition (sic)
15 right now, with different games and getting different
16 vendors. And Class II will open that up where we can get
17 more lucrative games and compete with some of the bigger
18 tribes, you know, for -- just to get some people in.

19 We're in a remote area, and if we have to put these -- we
20 use Class II, and we have 51 percent of the screen is going
21 to be a bingo card, people are going to go to other casinos.
22 They're not even going to stop by and visit our little
23 facility.

24 And if they have that delay -- because I have where it's
25 going to be a 10-second delay, you know, from the first time

1 you push the button till you actually see what you have.
2 That's going to bore people. They're not going to want to
3 play on the Class-II machines.

4 And I really feel that this is really restrictive, and if
5 it was something that was going to really benefit tribes --
6 you know, where we could do something to promote
7 sovereignty, but it's -- I kind of feel like it's unfair
8 that you guys want to come and change the rules and make it
9 less profitable for tribes.

10 So those are some of my concerns, and I'll let Gabe talk,
11 too, and I'll talk about some other concerns that I have.
12 Thank you.

13 MR. HOGEN: Thank you.

14 MR. GALAND: Well, I'd like to be a little clearer
15 about the objection that the chairwoman raised at the outset
16 as to what the Federal Register means by meaningful
17 government-to-government consultation. And with all due
18 respect--and we appreciate how hard you guys are working and
19 that you could meet with us today--we don't believe that 15
20 minutes and what we could achieve under the question and
21 answer dialog in 15 minutes is meaningful government-to-
22 government consultation.

23 Again -- and meaning no disrespect by that, but our
24 understanding of government-to-government means it's not
25 such a short time period to comment, and, certainly, on such

1 an accelerated track. That's just -- as Chairwoman LaClair
2 described, having received notice not even one week ago, as
3 far as we know. So again, we appreciate the efforts you've
4 made, but we are here, respectfully, under objection to the
5 premise that we are here meaningfully negotiating
6 government-to-government. We simply don't think that's the
7 case.

8 MR. GROSS: Mr. Galand, did you chose 15 minutes,
9 because we tried to block out times for the tribes in 15-,
10 30-, or 45-minute blocks, leaving it to the tribe to decide
11 how much time they wanted.

12 MS. LACLAIR: You know, actually, none of us
13 decided. We were just told -- I think it fell into the
14 tribal secretary's hands, and I think she just went ahead
15 and crossed it out. Maybe she couldn't get a -- like I
16 said, mail and getting things out, at least at our tribal
17 level, is not always easy. So it was on a fast track, and
18 maybe she couldn't get ahold of me that day, felt an urgency
19 to get it in, and just said, "15 minutes. Let's go ahead
20 and get it out."

21 MS. HEMLOCK: The actual letter that went out was
22 dated -- to the tribes, noting government-to-government
23 consultation process, was sent out on June 6th.

24 MS. LACLAIR: And that's a problem for us. We had
25 an election. We had an election that year -- not that year.

1 That month, and so I think things may have gotten caught up
2 in the former chairperson's mailbox. And then I got them
3 delayed, you know -- I don't know -- over a month delay.

4 MR. GROSS: We've heard comments from a number of
5 tribes about asking for an extension, that the Commission
6 extend the time for comments, that the Commission add a
7 public hearing, and this is something that the Commission is
8 very seriously considering. Does that go away to
9 addressing these concerns and objections that you have?

10 MS. LACLAIR: I think that it would be helpful.

11 MR. GALAND: I think it's certainly a start. I
12 think more than comment, our feeling, in all candor, is that
13 if we're being force-fed a set of proposed rulemakings. I
14 think a public hearing and some notice and opportunity to be
15 meaningfully heard would go a long ways toward satisfying
16 government-to-government consultation.

17 And, by analogy, if you look, for example -- not to say
18 too much -- at the National Historic Preservation Act, that
19 requires the federal government to consult with tribes on a
20 government-to-government basis for satisfaction of that act,
21 and federal courts have made it very clear that the form
22 letters are not sufficient in terms of government-to-
23 government consultations.

24 So with all due respect to the letters that were sent --
25 and we appreciate how difficult it is for you to work with

1 so may tribes, there probably are better ways to communicate
2 offerings such as this. Maybe the Portland regional office.
3 The gentleman we met outside, Mr. Peterson, has personal
4 relationships with people. You know, I appreciate it
5 difficult to sometimes pick the form, but that's probably
6 the preferred means of securing our attendance at a meeting
7 like this, and giving us the notice that we think we need to
8 be here.

9 Again, appreciating that's a major headache to
10 administer. But a form letter saying, at some point in
11 advance of this meeting, which you see, in some respects
12 been lost in the shuffle given how busy elected leadership
13 are, it's simple insuffice. And it was news to us, sitting
14 here today, that we had 15 minutes.

15 So all I have to say is we could both do a little bit
16 better to ensure that the government-to-government
17 consultation process is improved.

18 MR. HOGEN: Yeah. In that connection, we maintain
19 a Web site, and we probably, soon as we make decisions, like
20 coming to Tacoma for a consultation, announce it like that.
21 And so we will try to do a better job of getting the
22 announcements out early and to those tribes that have a
23 difficulty communicating by letter, with, perhaps, making
24 some phone calls to the. You might want to monitor our Web
25 site from time to time. And you might pick up on something

1 "ahead of the game," so to speak, to find the advance
2 notice.

3 MR. GALAND: Let me follow up on something I said.
4 I mean, we are sitting here with the opinion that nothing we
5 say will really change the outcome. The train is already on
6 the tracks -- and we know how hard you've been working.
7 We've been following the developments on those for many
8 months; and the train is now squarely on the tracks and it
9 has left the station, and it's probably not coming back as a
10 result of anything we have to say.

11 We look at the published comments here, from the Federal
12 Register, about the tribes strongly disagreeing with the
13 decision made by the Commission, strongly advocating no
14 change to the current regulation definition of, quote,
15 "electric or electromechanical facsimile," end quote, of a
16 game of chance. Then it concludes, "Accordingly, the
17 Commission concluded it could not accept some of the tribal
18 representatives recommendation in formulating the proposed
19 rule."

20 So there was some disagreement at some point in time. I
21 don't believe, from what I understand, that tribes were
22 actually asked to help put pen to paper in promulgating this
23 proposed rulemaking. But at some point, some comment, I
24 assume -- some constructive comment was offered; and it
25 sounds like, as this Federal Register notice was styled --

1 on some level it was done away with.

2 Now, that may not be fair, but the sense we have here is:
3 Nothing we say or nothing that may have been said prior is
4 going to do anything to bring that train back to the
5 station. It has left the station, and it's permanently
6 headed towards wherever the NIGC believes it needs to head.

7 MR. HOGEN: Yeah. I think the train has left the
8 station, so to speak. We've been trying to do this for a
9 couple of years now. And in that connection, we assembled
10 an advisory committee. We went through, initially, five
11 drafts; each successive draft contained changes. Not all of
12 those changes were the result of the advice we got from the
13 Tribal Advisory Committee. But certainly, a lot of them
14 were.

15 And I expect, if and when we decide to finalize these
16 proposed regulations, there will be changes from what we've
17 proposed and what is finalized. I expect some of that will
18 be as a result of what we believe these discussion -- what
19 those discussions around the actual mechanical Minimum
20 Internal Control Standards or what we have identified.

21 MR. GALAND: And just to be clear, again,
22 hamstrung by what ability we've had to repair, we are of the
23 position, as were the representatives that participated in
24 that process, that no change to the current regulation
25 definition of "electric or electromechanical facsimile games

1 of chance" is necessary.

2 We simply don't believe that it's necessary. I believe
3 there are rulemakings in place from 2002 that already
4 provide the guidance the industry needs, that Indian country
5 needs.

6 You all known as well as anybody that the Circuit Courts
7 from across the country--Ninth, Tenth, D.C., among others,
8 have repeatedly held in favor of the tribes or in opposition
9 of challenge, the Class II versus Class III distinctions are
10 not there.

11 We appreciate that the Department of Justice may have a
12 bad taste in its mouth relative to those decisions, but with
13 all due respect, we believe the guidance is already there as
14 a matter of NIGC rulemaking, and we believe it is crystal
15 clear as a matter of repeated federal-court opinion on this
16 topic.

17 Let me just pose a couple questions, if I might, unless
18 the leadership had other questions.

19 MS. LACLAIR: No.

20 MR. GALAND: I am not an expert nor really
21 familiar with some of the federal laws cited in the Fed
22 Register dated May 25th. But the suggestion is under at
23 least two laws -- the Small-Business Regulatory Enforcement
24 Fairness Act and the Unfunded Mandates Reform Act, that this
25 rule will not have an annual effect, on the economy, of \$100

1 millions or more.

2 And just thinking, off the top of my head, about Class-II
3 operation, whether it was Oklahoma, if it was in Florida, or
4 burgeoning Class-II operations from around Indian Country
5 and the country, and appreciating the magnitude of Indian
6 gaming, whether Class II or Class III, how did the
7 Commission arrive at the conclusion that hamstringing a
8 burgeoning Class-II industry, particularly in places like
9 Florida, where that remains the industry, will no have an
10 economic impact of \$100 million or more?

11 It occurs to us, I know by these additions, that it will
12 chill, and perhaps foreclose, any market far in excess of
13 \$100 million. So I'm curious as to why the Commission drew
14 those conclusions.

15 MR. HOGEN: Well, I think the approach we took to
16 that issue was: There's lack of clarity right now, with
17 respect to what distinguishes a technologic aid in Class-II
18 gaming and electronic facsimiles of games of chance there
19 are.

20 Much of what we see being played in venues like Florida
21 are games that are facsimiles. The player touches to button
22 once; the machine does everything. That's a facsimile. And
23 so to the extent that there is such gaming being conducted
24 its unlawful. It's Class-III gaming being conducted without
25 the benefit of a Class-II compact.

1 That's why these regulations are needed. So the tribes
2 and the gaming manufacturers will have clearer guidance as
3 to what distinguishes the facsimiles from the technologic
4 aids.

5 So we don't want to have to address those concerns by
6 closing all of those facilities, fining all of those tribes,
7 but rather, giving some guidance. NIGC was directed, in the
8 Indian Gaming Regulatory Act, to promulgate standards, and
9 if there's anyplace where there's a crying need for a
10 standard -- this could clarify one of those kind of
11 uncertain areas: What's Class II and what's Class III.

12 And so to the extent that some unlawful activity today
13 might have to be modified to comply with the law, I think
14 that's moving in the right direction, and we shouldn't fall
15 into this dollar category that you referred to.

16 MR. GALAND: Well, as the NIGC envisions it, it
17 represents that it will not have an affect on the economy of
18 the \$100 million or more, how did they come to that
19 conclusion, unless it's different than what we just
20 described? And in fact, what economic impact does NIGC
21 envision -- and the NIGC, of course, appreciates, almost to
22 the penny, how much is actually being gamed in Indian
23 country.

24 What kind of economic impact does NIGC envision will
25 occur as a result of this clarification, as we deemed it, of

1 definitions?

2 MR. HOGEN: Well, we think the threat that
3 currently hangs over the head of Class-II gaming, that it's
4 undefined, will be alleviated, it will go away, because it
5 will bring clarity to that issue.

6 It would secure this place in the tribal-gaming scenario
7 for fun, attractive, profitable gaming and permit tribes to
8 invest in the equipment they need to do that without the
9 doubt of uncertainty that currently exists.

10 MR. GALAND: And again, has the economic impact
11 been quantified?

12 MR. HOGEN: Well, no. I mean, we don't know,
13 right now, how much of the roughly \$23 million annually was
14 generated was Class III, how much of it is Class II, or how
15 much of it is purportedly Class II but actually falls into
16 that Class-III area.

17 We have some estimates, but we don't have a precise
18 knowledge of that.

19 MR. GALAND: Okay. From our point of view, it
20 appears disingenuous, then, to suggest by Federal Register
21 notice, that -- to suggest or represent that this change,
22 this clarification of definitions, will, quote, "not have an
23 annual effect on the economy of \$100 million or more.

24 It occurs to me there needs to be some more math that
25 needs to be done to make those misrepresentations (sic).

1 And I appreciate that is not really the larger issue here,
2 there are representations made here that I think require
3 some math to be run and some things to be tightened down.

4 Returning to the issue you talked about in terms of
5 illegality, the question we would is: In light of Ninth
6 Circuit, Tenth Circuit, D.C. Circuit, and other federal
7 court rulings on the issue of Class II versus Class III, and
8 whether certain acts are or are not legal under the Johnson
9 Act -- in light of that being the law of the land, at
10 present, how are Class-II devices, as you described them,
11 legal? Or the subject Class II machines.

12 MR. HOGEN: The MegaMania game has the game that
13 have been in most of those case, I think, said, for the most
14 part, the courts were just addressing the scenario
15 represented in this game format.

16 The MegaMania game is a bingo game that you had to have
17 12 players before you could start to play the game. You had
18 a big, bulky terminal that you daubed you own bingo cards,
19 and it took a minute or more to play each of those games.

20 What we see on the floors today are not those games where
21 the player had to be attentive to the drawn ball and so
22 forth, as occurred in MegaMania, but devices that not only
23 let the player play bingo on electric player stations but
24 replicate what appear to be slot-machine reels. And that's
25 okay as long as that doesn't influence the play of the game.

1 Under those court opinions, you can use pull-tab machines
2 where pull tab is also echoed in a video screen.

3 Those machines, today, are very obsolete compared with
4 what's being used, where the player puts their money in,
5 touched the button once, and the game is over and the slot-
6 machine reels appear.

7 So it's crossed the threshold and ceased to be Class-II
8 gaming. It's ceased to be consistent with those opinions
9 and became a facsimile of a game of chance.

10 MR. GALAND: And that's illegal?

11 MR. HOGEN: It's not illegal if you have a
12 tribal/state compact, but then such game is played under the
13 compact.

14 MR. GALAND: Right. And then if they are deemed
15 illegal, why wouldn't -- I would not recommend this be the
16 case -- but why wouldn't the Department of Justice and the
17 U.S. Attorneys and FBI or federal law enforcement simply
18 descend upon such an operation with, of course, probable
19 cause to do so, and take criminal law-enforcement action, if
20 they are illegal, as you suggest?

21 MR. HOGEN: I think, in part, because we have said
22 to them, "This area is not very clear. It needs clarity.
23 We can come up with a set of regulations that will give
24 tribes the needed guidance so that they can do what needs to
25 be done and we can avoid that embarrassing, maybe

1 financially disastrous prospect of criminal prosecutions
2 against tribal operations.

3 That was one of the things that prompted us to get into
4 the regulation-writing in the first place. Tribes in
5 Oklahoma were playing such games, and they did not accede to
6 the NIGC request to "stop playing because you don't have a
7 compact." So consequently, we closed those facilities, all
8 of their games, and imposed fines to the tune of \$9 million.

9 And that is a much more egregious, onerous approach to
10 fulfilling the trustee's role to help keep the integrity of
11 Indian gaming and promulgate some regulations that can
12 clarify such a area.

13 MS. BYRD: In Oklahoma, did they have the same
14 kind of games that we have now?

15 MR. HOGEN: Well, the pictures been evolving since
16 the Indian Gaming Regulatory Act was passed. I think the
17 games that they played were more of a stand-alone type of
18 game than the interlinked games that they have now.

19 MS. BRYD: Then why attack the machines -- because
20 the Indians finally can go out there and make something with
21 them; you know, the regulations that were existing? And
22 now, you know we made something.

23 I think that nobody thought that we could make something
24 like this, and we have. And it fits all the requirements.
25 But, you know, now you guys want to change the rules and

1 make it harder, and I thought IGRA was supposed to help
2 Indian tribes. I thought that was you were developed for.

3 MR. HOGEN: Well, we intend to be helpful. We're
4 concerned that the distinction that Congress intended
5 between Class II and Class II has become so blurred that,
6 without some regulatory definition, the industry is as risk.

7 I know that our time has been short. We have another
8 tribe we promised to meet. So if there are some closing
9 comment that you'd like to make, we'd appreciate those. And
10 we also encourage you, with a little more time here, to send
11 us any written comments that you might have.

12 MR. GALAND: Well, let's follow up with another
13 question. What is -- as Debra just suggested, what is the
14 public policy that is being served? You have a well-oiled
15 machine; as you know, perhaps the most regulated industry in
16 the country, that is Indian gaming. It's succeeding to the
17 tune of \$24 billion as you know.

18 There's not a situation as we know, that is riddled with
19 organized crime or vast embezzlement schemes of other
20 things, as you may find in the nonIndian gaming industry.
21 So recognized your federal fiduciary obligations you invoked
22 earlier, to act in the best interests of the Indian people
23 and to perpetuate policy of self-determination and
24 self-reliance, what is the public policy that is being
25 served in making a change that will chill a market and

1 ultimately throw a wrench into a very well-oiled machine
2 that is providing excessive revenue for essential
3 governmental services for impoverished Indian people?

4 MR. CHONEY: Even though the market today is
5 growing, it's huge, \$22.6 billion -- it's the fastest
6 growing industry in the United States today -- as you know,
7 there are many, many critics of Native American gaming, not
8 only in Congress but the media, the state government, the
9 local governments, around the nonIndian -- surrounding
10 casinos. There's a lot of critics.

11 You go into some of the states that are predominantly
12 Class II, you walk into a Class-II facility, and you don't
13 see any Class-II machines that are -- they're supposed to be
14 Class II.

15 We have an obligation, the statute -- Congress expect us
16 to ensure that these Class-II tribes play Class-II --
17 provide Class-II games to their patrons. If they don't,
18 they're in violation of the statute. We are obligated to
19 see that they play by the rules. If we don't, one of us is
20 going to be standing in front of Congress explaining to them
21 how come we're not doing our job.

22 MR. GALAND: And with all due respect, I believe
23 the federal courts from across the land are agreeing that
24 tribes, whether operating Class II or Class III or both
25 types of devices, are playing by the rules. And with all

1 due respect to the chairman, we do not believe there is
2 anything illegal about it. And with all due respect to the
3 entire Commission, we do not believe that these proposed
4 rulemakings are in the best interest of Indian country, nor
5 are they necessary, not do they serve the interests of
6 perpetuating the self-determination policy in communities
7 like the Skokomish Indian community and to provide essential
8 governmental services for their people.

9 And in closing, In Washington State, as you probably have
10 hear for two days, we have reached a point of market
11 saturation in the Class-III market. Class II is, right now,
12 the only means for tribes, like Skokomish, who are leased
13 out and doing their best to operate machines to create
14 additional revenues for essential government services for
15 their people.

16 So in closing, we do not believe that this proposed
17 rulemaking is necessary. We believe that the federal courts
18 have provided abundant guidance on this topic. We
19 respectfully offer these comments under objection that this
20 it, quote, "meaningful government-to-government
21 consultation."

22 However, we look forward to working with you to provide
23 more meaningful written comment, to participate in a public
24 hearing, if that is something the NIGC will consider. We
25 agree and advocate for an extension of that public-comment

1 period so that we can participate more meaningfully in such
2 things.

3 And we, of course, just talked about the policy of the
4 issues. We have not even had an opportunity to talk about
5 the other Federal Register notice that talks about the
6 various mechanical components to the proposed rulemakings,
7 which we would welcome an opportunity to do at some later
8 point in time.

9 MR. HOGEN: Okay. Thank you for your concerns.
10 We'll forward to receiving these written documents. This
11 concludes the consultation.

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13 (The consultation with the Skokomish Indian
14 Tribe concluded at 5:12 p.m.)
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A P P E A R A N C E S

For the Quinault Indian Nation:
P.O. Box 189
Taholah, Washington 98587

Randy Scott, Tribal Operations Director
Janie Figg, Internal Controls Coordinator
Becky Gilbertson, Compliance Officer, Quinault
Beach Resort and Casino
Jennifer Scott, Tribal Member

(The consultation with the Quinault Indian
Nation began at 5:16 p.m.)

1 MR. HOGEN: This the time and place scheduled for
2 government-to-government consultation. We're convened on
3 the 25th of July, in Tacoma, with the Quinault Indian
4 Nation. I'm Phil Hogen, chairman of the National Indian
5 Gaming Commission. Chuck Choney is the other member of the
6 Commission. Here with us is our acting general counsel,
7 Penny Coleman. From her office, Michael Gross and John Hay,
8 from the D.C. office. Randy Sitton is our regional director
9 from Portland. Natalie Hemlock is an assistant to the
10 Commissioner from our Washington, D.C., office. And Alan
11 Phillips is from our Sacramento office, assisting us. Gary
12 Peterson is an investigator from the Portland office.

13 And we published our proposed regulation on the 25th of
14 May, with the definitions that go with those regulations,
15 related to the classification of games and how equipment
16 used to conduct uncompacted, Class-II games would differ
17 from electronic facsimiles of games of chance that require a
18 tribal/state compact.

19 Having said that, would you introduce yourselves to us,
20 here, on the record, and tell us how you are affiliated with
21 the tribe or its gaming, and then we would very much like to
22 hear your thoughts on what we've proposed.

23 MR. SCOTT: For the record, my name is Randy
24 Scott, and I am here representing the Quinault Indian
25 Nation. I am, by title, the tribal operations director,

1 which means the council is above me. I deal with everything
2 that is administrative and policy-oriented for the benefit
3 of the council.

4 How I work with gaming is that I've been assigned to work
5 on the gaming policy for the nation. I work on it both
6 internally and externally. As you know, I've been seen in
7 quite a number of places with you folks, and I will continue
8 to do that in relation to Quinault Nation views on tribal-
9 government gaming. And, of course, protecting tribal
10 governmental gaming, as we currently know it, is very
11 important to use.

12 Also in the room, we have some folks from our facility,
13 and I'd like to ask Janie to say your name and what you do.

14 MS. FIGG: My name is Janie Figg, and I'm the
15 internal controls coordinator.

16 MS. GILBERTSON: I'm Becky Gilbertson, compliance
17 officer to the Quinault Beach Resort and Casino.

18 MS. SCOTT: I'm Jennifer Scott. I'm a tribal
19 member, and I'm just an observer today.

20 MR. SCOTT: With that, the fact that your rule is
21 out, or your proposed regulation is out -- so I've spent a
22 bit of time looking at it, and I think I have some comment
23 that will just be on a couple of the technical things.

24 And one is -- and I've stated this to the Commission in
25 the past -- is that the consultation process is -- I think

1 that every time we see it, it's different, and we would like
2 to help you figure out some ways to standardize some
3 consultation issues.

4 And my viewpoint is, when you look at the number of
5 places you're going, and/or were proposing to go, in
6 relation to this current round of consultation, that, if you
7 used the regional organization, that you wouldn't go any
8 more, in terms of number of places, and you would probably
9 reach more people. And I mean more tribal governments, and,
10 to my way of thinking, that's what we should all be about.

11 I think that we're in this just like you're in this.
12 You're in this for our benefit, in terms of the national
13 scene, the national scheme, national policy, and
14 implementing national policy, and helping us deal with
15 things that are important for protecting tribal-government
16 gaming and managing tribal-government gaming in a sound,
17 secure, safe manner.

18 And so, like I say, I think that we need to work together
19 on this. And the fact that you've been here for two days
20 and you've had probably, what, 23, 24 tribes come and talk--
21 and from this neighborhood--I think is a good indicator
22 that, if you used the regional organization in the right
23 way, it's going to work, and we're going to get input, we're
24 going to create a process to work together.

25 I mean, from my point of view, you're an independent

1 federal regulatory agency, and we want to help you maintain
2 that federal regulatory independence. We think it's
3 important for us; it's important for the industry. And by
4 working with us on these kinds of matters, we're going to
5 both help you and work with you, and it's going to be better
6 for all of us in the future.

7 Specifically, the issues around Class II are the issue of
8 a clear line of distinction. We've been hearing that for
9 quite some time. From our perspective in Washington State--
10 and I'm sure you've heard it in other areas--the fact that
11 you can sit in front of any known Class-II machine that
12 exists--and especially, in Washington State, we've got a
13 number of different providers--and you can change the card,
14 which means you're going to change what that machine is
15 playing to for your bet, that's the clear line of
16 distinction. You cannot do that with any Class-III device
17 that we know.

18 We can't do that with any Class-III device that we've
19 seen. You can change denominations, but you can't change
20 exactly what that machine is betting on. The fact that you
21 can do that with a bingo aid on the machines in which
22 they're currently functioning, currently licensed, currently
23 approved, most of them -- I think there's some that aren't
24 probably good through that total process -- but there was a
25 list that was put out by you folks. And so I think that's

1 important to note.

2 The fact that all the machines are operating under the
3 auspices of what we would call the "courts' decisions" in
4 relation to this issue is also, I think, a good indicator
5 that things are working right and that is some -- there's
6 good aspects to what currently is going on, in Indian
7 country, with Class II.

8 The specific things I'd like to say is: I think any
9 time-delay designations within the rule should be removed.
10 I think that's, to me, a disincentive. I think the issues
11 that are around the formula that we seek, the N plus 1,
12 that's a disincentive. When you put your money in the
13 machine, you know, automatically, that that first hit is a
14 non-winner, no matter what, and I think that's a -- that's a
15 very big disincentive, in relation to Class II and the
16 future of Class II.

17 I think there should be some ability for Indian country
18 to work with you in finding alternative methods of
19 classification that work for Class II. It is a growth
20 industry. It's an important aspect of the industry as we
21 currently know tribal-government gaming.

22 And as I say, we're just as concerned about the future of
23 it as you are, and we think that we should be able to bring
24 some alternative that should be considered, and that some
25 report should be issued, from you, in terms of response to

1 us submitting those types of documents.

2 We urge that the effective-compliance-date deadlines --
3 that they should be changed, and the aspect of when the
4 deadlines are for the manufacturer's designs to be all
5 complete. We think they're way too short. And the
6 implementation period for that process is way too short.

7 I personally think 36 months is probably more reasonable.
8 I'd be willing to settle for at least 18. I don't think we
9 can get there without at least 18 months. And I don't think
10 any manufacturer can get there without at least 18 months.

11 Also, I would urge that you folks hold public hearings,
12 to issue one more draft for further public comment, and
13 maybe public hearings in relation to this rule. That gives
14 us more time to work. It gives us time to really present
15 some of the alternatives that I've mentioned, and it allows
16 us to look at the technical standards, as they're coming out
17 or as they're available, in relation to this, because they
18 do fit together, and it's important for us to understand how
19 they work and function together.

20 And I think those are my high spots. There will be a
21 letter.

22 MR. HOGEN: Okay. Well, you did an excellent job
23 of saying a lot in a short period of time. We appreciate
24 that.

25 MR. SCOTT: I have one more thing, and that is:

1 In Washington State, Class II is a growth -- it's our only
2 opportunity right now. We've got a compact situation where
3 all the machines that are available in Washington State,
4 under the compacts, are taken. In fact, there's people
5 chomping at the bit for more.

6 And so the only growth opportunity, especially places
7 like Quinault, where we're at the ends of the earth in the
8 minds of people from the East Coast, because we're on the
9 Pacific Ocean -- the only opportunity we have for any kind
10 of growth in machine gaming is Class II.

11 MS. COLEMAN: Could I ask you, quickly, how many
12 Class-II machines do you have?

13 MR. SCOTT: We have about--

14 MS. FIGG: 35.

15 MR. SCOTT: --35, and if we're going to grow any
16 more, it's there.

17 MS. COLEMAN: What kind of machines are those?
18 What kind of games?

19 MS. FIGG: SDG?

20 MR. SCOTT: Yeah, they're all SDGs.

21 MS. COLEMAN: Now, are those on3-touch, or are
22 they two-touch, or three-touch games?

23 MR. SITTON: Similar to the Washington State --

24 MR. SCOTT: Yeah, similar to what our Class-III
25 games are. It's a system where you have to hit the button

1 twice.

2 MS. COLEMAN: About how fast do they play?

3 MR. SCOTT: About the same as our Class IIs.

4 It's: you hit, and then you hit. Once it starts spinning,
5 you hit it, and that puts the game in motion, and they call
6 it with -- the second is the daub, and then it will still
7 spin a little bit and then stop.

8 MS. COLEMAN: So it's, what, two or three seconds?

9 MR. SCOTT: Is it that long? I don't think it's
10 that long. But the start of the game is immediate. I mean,
11 there is a delay because of the way electronics work, but to
12 the normal eye, it starts. And then you can daub as quick
13 as you want after that, and then it stops fairly fast.

14 I will do my best to get time lines, and I will insert
15 current time lines in our letter.

16 MR. HOGEN: All right. We'll look forward to
17 that. Thank you very much for your comments.

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19 (The Class II Consultation for July 25, 2006,
20 concluded at 5:27 p.m.)
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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
County of King)

I, the undersigned Notary Public in and for the State of Washington, do hereby certify:

That the annexed transcript of the Tuesday, July 25, 2006 Class II Consultation, was taken stenographically by me and reduced to typewriting under my direction;

I further certify that I am not a relative or an employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or outcome thereof;

I further certify that the annexed Tuesday, July 25, 2006 Class II Consultation, is a full, true, and correct transcript, including all objections, motions, and exceptions of counsel made and taken at the time of the foregoing proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal this 1st day of August, 2006.

Linda M. Grotefendt ms

Linda M. Grotefendt, CCR
Notary Public in and for the
State of Washington, residing in
Renton.

My commission expires March 10,
2008.

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